UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GERALD CORNELIUS ELDRIDGE	.	C.A. NO. H-05-1847
	.	HOUSTON, TEXAS
VS.	.	
	.	APRIL 17, 2012
RICK THALER	.	10:00 A.M. to 7:00 P.M.

DAY 2 of 3
TRANSCRIPT of EVIDENTIARY HEARING
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

APPEARANCES CONTINUED

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P R O C E E D I N G S

THE COURT: Please be seated.

I think we're ready to proceed. Go ahead and take the stand, Dr. Roman.

Ms. Oden, ready when you are.

THE WITNESS: Good morning, Your Honor.

(Michael A. Roman, petitioner's witness, previously sworn.)

CROSS-EXAMINATION

BY MS. ODEN

Q. Good morning, Dr. Roman.

A. Good morning.

Q. Probably predictably, I would like to start talking to you about your experience and your background. Okay? Your education didn't start with but can be summarized with having a predoctoral internship with your major rotations being in adult and pediatric rehabilitation services, outpatient psychiatry, and in a multidisciplinary pain clinic; is that right?

A. As well as an eating disorders clinic, yes.

Q. Okay. Well, that was one of your minor rotations --

A. It was.

Q. -- which was I was going to get to next.

A. Fine.

Q. Your other minor rotations were comprehensive pain management and general internal medicine?

A. Correct.

Q. And your master's thesis was on the relationship between emotionality and eating behavior?
A. There isn't a master's awarded within my doctoral program, but, yes, the equivalency thesis was, that's correct.
Q. And your doctoral dis was on clinical assessment of memory in children?
A. Correct.
Q. And your Ph.D. is in clinical psychology?
A. It is.
Q. And your postdoc fellowship was in pediatric neuropsychology?
A. Adults as well, with a specialization in pediatrics, yes.
Q. And your postdoc certification is in psychopharmacology?
A. Yes.
Q. And you are a licensed specialist in school psychology?
A. That's correct.
Q. There's not that many of those, are there?
A. LSSPs?
Q. Right.
A. Tons of them.
Q. Tons of them. In Texas?
A. Yes.
Q. There aren't only about 27?
A. LSSPs?
Q. LSSPs.

A. No, ma'am.
Q. Okay. Your professional experience began in a Chicago youth center?
A. I believe that's correct, yes.
Q. In 1984 or thereabouts?
A. That sounds correct.
Q. You were a clinical trainee for youth guidance the next year?
A. Yes.
Q. And basically you had a clinical and neuropsychology focus through 1987?
A. Obviously without looking at the CV, it's harder to say, but that sounds accurate, yes.
Q. And if you put it on your CV, which is the only way I would know this, then it's accurate?
A. Absolutely. Right.
Q. Okay. You were a staff psychologist at the Evaluation Center for Learning?
A. That's correct.
Q. And you interned at the Department of Rehabilitation Medicine?
A. Yes, that's correct.
Q. And you've taught pediatrics?
A. I have, yes.
Q. And you consulted in the pediatrics department as well?

A. I have.
Q. And basically from 1991 until now, you are a clinical neuropsychologist and a clinical psychologist in private practice?
A. I've done some other things in that time, especially at the beginning of it, but certainly pretty much full-time since 1994, that's been true, yes.
Q. Okay. So, what are the things you did at the beginning that were different?
A. There was some overlap with some of my teaching experience and my work in the department of pediatrics as a faculty member with my private practice, which I was doing part-time.
Q. Okay. And all of your teaching experience is either in the fields of pediatrics or education or general psychology; is that fair to say?
A. Or neuropsychology, yes, ma'am.
Q. Okay. So, Doctor, what I'm putting up on the Elmo, is that a list of your case history as a forensic expert for the last four years?
A. It is.
MS. ODEN: Your Honor, I would like to introduce Respondent's 69.
THE COURT: Any objection?
MS. FERRY: No objection.
THE COURT: It's admitted.

BY MS. ODEN
Q. So -- I guess I'll leave that up there. Basically -- I'm sorry. Yesterday you said that you had done forensic work when you had a hill country practice and your forensic work was a lot of kids. What kinds of forensic work with kids were you doing?
A. If I may, I think that I said that I did more active ongoing forensic work when I had an office in the hill country. But with regard to the work, a number of things. I consulted with a number of primarily juvenile probation departments in several different counties. I did a number of --
Q. I'm sorry. I don't mean to interrupt. But while we're talking about the juvenile probation departments, what kind of forensic consulting did you do for the probation department?
A. A number of things. Primarily I performed psychological evaluations for arrested or incarcerated juvenile offenders.
Q. For what purpose?
A. A number of different purposes. In some cases it was to rule out psychological factors for purposes of treatment. In some cases it was related to certification to stand trial as an adult. There are some cases where during that same period of time, where I did some consultation primarily with appointed defense attorneys on criminal cases.
Q. And would that be in the line of insanity defenses, competency to stand trial, what kind of consultation?

A. Exactly those types of things. In some cases I was asked to review records or perform an interview, in other cases evaluations. Sometimes as generally as to look at potential mitigating circumstances as the defense team was attempting to move forward in the case.
Q. And mitigating circumstances would be in a death penalty case?
A. They were usually pretty general in the way that they phrase it, but, yes, these were either capital murder or murder cases, yes.
Q. And when you're talking about that time period, what is that time period?
A. I'm so bad at that. Probably 1997, maybe 1996. And I want to say that I closed the hill country practice in 2006 maybe. So, about an eight- to nine-year period, thereabouts.
Q. And did you ever testify as an expert in either federal or state court, for example, in a competency to stand trial in an adult case?
A. Yes.
Q. How many times?
A. I believe that I've only given testimony in court twice on competency -- three times.
Q. And we're talking about competency to stand trial as an adult?
A. No, more cases than that. In terms of actual testimony in

court, perhaps four or five more cases than that, but they didn't always require testimony in court.

Q. And about how many cases total did you have to perform an evaluation of whether someone was competent -- whether an adult was competent to stand trial?

A. Probably not more than three or four.

Q. You just said you testified in four or five cases?

A. Because you were talking about the idea, if I understood the question correctly, about competency to stand trial as an adult.

Q. And I should have phrased it more clearly. How many cases, you said three or four, that you have evaluated an adult for competency to stand trial?

A. Right. So, as I think about it, I believe that I have testified in court three times on two separate cases. There have been a couple of other cases where I've been asked to look at that question, but I have not been asked to testify in court.

Q. Okay. And, so, if you know, how many cases have you evaluated an adult to determine if they are competent to stand trial?

A. My belief, as I recall it, is that there have been three such cases that come to mind for competency to stand trial.

Q. Okay. And of those three cases, you testified in two of them?

A. One of them two times, yes.
Q. Okay. And that would be the Jeffery Wood case?
A. It is, as a matter of fact, yes.
Q. So, you testified twice about his competency to stand trial?
A. That's correct.
Q. And then you testified one more time about his competency to be executed?
A. No. There were actually two competency trials. The first relief was granted, and he was found incompetent. There was a subsequent competency hearing.
Q. Are we talking about competency to stand trial?
A. Yes, ma'am, we are.
Q. Okay. So, you testified twice in Jeffery Wood about his competency to stand trial?
A. Yes, ma'am.
Q. And then you testified a third time about his competency to be executed?
A. That is correct.
Q. Okay. So, leaving aside Mr. Wood's case, you've testified one time about an adult's competency to stand trial?
A. Yes.
Q. Okay. And now returning to the juvenile part of your practice, when you evaluated a juvenile's competency to stand trial as an adult --

A. Yes.
Q. -- that's an entirely different legal standard, isn't it?
A. It is.
Q. And it's not asking whether the juvenile is competent in the same way that we ask if an adult is competent? It's talking about a juvenile's understanding of things on a more adult level, isn't it?
A. Essentially that's a correct phrasing, yes.
Q. Okay. So, within the last four years, the sum total of your forensic experience is summarized in Respondent's Exhibit 69, this list; is that correct?
A. Those are cases -- there have been a couple of cases where I've been asked to perform some evaluations that have had some legal significance, but they typically have been review kinds of things.
Q. So, this is not a correct representation of all of your forensic work within the last four years?
A. I think that this is a correct representation of everything where I've been asked to do an evaluation or prepare some type of report.
Q. Okay. So, in other cases you just looked at some records and gave an off-the-cuff opinion, but did not write a report?
A. It's more that I didn't necessarily have a legal role. There were some cases where I performed an evaluation, somebody was referred to me for clinical purposes. So, there were

forensic aspects to the case, but I wasn't directly involved in doing anything on the legal side of that.
Q. In those cases you were performing your role strictly as a clinician, a treating psychologist?
A. A treating evaluating or consulting psychologist, yes, ma'am.
Q. Okay. All right. And those cases that are on this list are basically in 2008, there was a civil suit of a child against Memorial Hermann Medical Center?
A. Correct.
Q. Did you have to do a psychological evaluation of that child?
A. Ultimately not.
Q. Okay.
A. It was purely a record review. They settled.
Q. And in 2009, I assume this is a divorce case, a custody battle of some sort?
A. Essentially. The divorce was long over, but it was a custody-based issue, yes.
Q. And we've already talked about, briefly, and I'm sure we'll talk more again, about 2009, your involvement in Jeffery Wood's case.
A. Okay.
Q. 2010, this looks like a guardianship of a minor case?
A. It's actually not a minor. It was an individual who's an

adult --
Q. Okay.
A. -- but has been mentally retarded with evidence of an autistic special disorder.
Q. Okay. And in 2011, it looks like a civil case, a lawsuit by a child against a school in Puerto Rico?
A. Essentially that's true, yes.
Q. Okay. Obviously in Mr. Wood's case, there was a question as to whether or not he was malingering. In any of these other cases, was there a question about whether the person you evaluated was malingering?
A. The question of whether somebody is feigning or not is implicit in virtually everything anybody does, but in a specific way, no.
Q. Did you -- I know that you said in that 2008 case, *Lingo Chang*, that you didn't have to do an evaluation of an individual. It was just a records review. But in the 2009 case, did you have to -- did you have to administer any malingering tests --
A. No.
Q. -- or tests of effort?
A. I did not.
Q. Okay. In Mr. Wood's case, did you administer any tests of effort?
A. No, I did not.

Q. And in the guardianship case, the gentleman that was retarded with an autistic disorder, did you administer any -- was there any concern about him malingering?
A. No, there was not.
Q. Okay. And in the case of the 2011 case of the child suing the school, was there any question of that child malingering?
A. There was not.
Q. Okay. So, even though technically in a forensic sense you consider malingering all the time, there are obviously forensic cases where malingering is not an issue?
A. There are forensic cases where malingering is not a central issue to the case, yes.
Q. Okay. And most of your experience in the last four years has been in cases where malingering was not an issue?
A. That is correct.
Q. Okay. Who is your client in this case?
A. My client in this case is the attorneys who represent Mr. Eldridge.
Q. Okay. Have you ever worked in a mental hospital?
A. I have.
Q. And what mental hospital was that?
A. It's been a number of years. Charter Barclay in Chicago.
Q. And how long did you work there?
A. You know, I don't recall. And I don't know for sure if that's on my CV or not, but I believe it is. Perhaps about a

year, perhaps not quite a year.
Q. And do you remember when that was? We can always look at your CV.
A. Right. Approximately -- approximately 1984, '85.
Q. And what were the majority of the patients that you saw? I assume you saw them in a clinical setting, a treatment setting?
A. I did. I did.
Q. And what were the majority of the patients that you saw there in this hospital for?
A. It was pretty mixed. There were a couple of different floors, and in some cases these were adolescent offenders with a host of behavioral or other more general issues. There were two locked units where there were primarily sometimes older adolescent but primarily adult offenders -- I said offenders. See, there we go -- inpatients, who were being treated for schizophrenia and other psychotic disorders, major depressive disorder, those types of things.
Q. About how many adults do you think that you treated during your year or less that had schizophrenia?
A. Well, I want to be careful about the characterization of treatment. At that point I was still a graduate student. So, I don't want to mischaracterize that I was doing the treatment of these individuals. But within my role there in terms of interfacing with them in a clinical capacity, I don't know, perhaps a hundred or so.

Q. Okay. And, so, let me be clear, you were a graduate student being supervised by someone who was already licensed and you were not treating those patients; is that right?
A. The role in which I served was what was called at the time, and sometimes still is, a psych tech. We provided basic intervention services, basic assistance to the nursing staff, in terms of spending time with patients, taking vitals, charting, dealing with aspects of their treatment and intervention plan that were not traditionally therapeutic. So, that was the basis of it.
Q. So, what you're telling me is you weren't supervised by licensed psychologists?
A. No.
Q. You were unsupervised?
A. I wasn't operating in the role of a psychologist.
Q. You were basically a tech, making sure they took their pills, giving them someone to talk to, taking their vitals?
A. That's a reasonable characterization, yes, ma'am.
Q. Okay. And you said you worked there for a year or maybe slightly under a year?
A. I think that's about right, yes, ma'am.
Q. Maybe like a school year, like two semesters while you were doing your graduate work?
A. That's entirely possible yes, ma'am.
Q. Okay. Have you ever diagnosed a schizophrenic in the

forensic context?
A. I'm not sure I quite understand that question.
Q. Do you understand what I mean by diagnosing in the work that you do?
A. Of course I do.
Q. And do you understand what I mean by a schizophrenic?
A. Of course I do.
Q. And do you understand what I mean by the forensic context?
A. Perhaps not --
Q. Okay.
A. -- in light of my uncertainty about the question. Perhaps that's the breakdown.
Q. Okay. Well, then I'll put it this way: Have you ever been asked by an attorney or a court to evaluate an individual in a legal context to determine what their mental health issues were and decided that they were schizophrenic?
A. The first part, yes; the second part, no, I don't believe I have made a new diagnosis of schizophrenia in an individual for which I performed a forensic evaluation.
Q. And I don't mean whether it's new or you agreed with some previous diagnosis. I'm just saying in general have you ever -- and, of course, you think Mr. Eldridge is schizophrenic, so I'm leaving today's case out of this --
A. I understand.
Q. -- in your previous history, have you ever worked as a

forensic psychologist on a case and diagnosed someone as schizophrenic?
A. There have been some primarily going back to the juvenile offender population, yes.
Q. So, you diagnosed some juveniles with schizophrenia in a forensic context?
A. Or corroborated that it was an accurate diagnosis, yes.
Q. And about how many of those, do you think?
A. It would be a very small number. It would probably be less than five.
Q. Okay. And, again, that was when you were doing juvenile work in what time period again?
A. Again, approximately 1997 through perhaps 2005, 2006.
Q. Okay. And have you ever been to death row?
A. Well, I have been to Polunsky. I have not been on death row.
Q. Okay. You've been in the interview room at Polunsky?
A. I have.
Q. Okay. But you've not actually seen any of the pods or seen the living environment?
A. I have seen pictures and representations of it. I have not actually been physically viewing it with my own eyes, no.
Q. Okay. You said you conducted about two to 3,000 neuropsychological evaluations yesterday?
A. Probably. Probably that, maybe a little more.

Q. Okay.
A. Now, again, though, assessments. In terms of evaluations, it's probably seven to 8,000, but in terms of neuropsych assessments, probably 2,500, 3,000.
Q. Okay. And of the ones that you conducted an assessment -- and I'm sorry for using the wrong word. An assessment is the more picky one, right? It's the more detailed, the more thorough?
A. It is the way I would say it, yes, ma'am.
Q. Okay. So, of the neuropsych assessments you've done, how many of those were on someone with schizophrenia?
A. It's really hard to say. Perhaps a hundred, but it's truly just a guess.
Q. Okay. Fair enough. And of all of your neuropsych assessments, not just the ones on the schizophrenics, but all 2,500 to 3,000, how many of those assessments resulted in you concluding that the individual was malingering?
A. Again, I would have to guess, but I would say that number probably is not greater than 50.
Q. Fifty? 1-5? Fifty, 5-0?
A. 5-0. Where there has been a concern about feigning, dissimulation, or overrepresentation of symptomatology.
Q. So, as I looked at your publication list, I noted that you've published in a whole lot of fields dealing with children's issues and concentration issues. I didn't see any

that dealt with forensic issues. Would that be an accurate statement?
A. This is an accurate statement, yes, ma'am.
Q. Or that dealt with people with antisocial personality disorder?
A. That is correct.
Q. Or malingering?
A. That is correct.
Q. And schizophrenia or psychotic disorders in general?
A. That is correct.
Q. And I could probably speed this up by summarizing that none of your conference presentations deal with forensic issues?
A. I believe that's correct, yes.
Q. Antisocial personality?
A. Correct.
Q. Malingering?
A. Correct.
Q. Or schizophrenia?
A. Correct.
Q. And none of your workshops or lectures deal with forensic issues?
A. Ones that I presented, you mean?
Q. The ones that were on your CV, the workshops that you presented or lectures. There was a --
A. Well, one of the reasons I ask is I used to have on my CV

workshops I've attended. I don't recall whether I still have that on my CV or not. I have not presented workshops in those areas; that is correct.

Q. Okay. Or antisocial personality?

A. That is correct.

Q. Or malingering?

A. Correct.

Q. Or schizophrenia?

A. Correct.

Q. Okay. And none of your research grants dealt with those four issues either?

A. That is correct, yes, ma'am.

Q. You stated yesterday that you're particularly well suited for competency for execution evaluations, because you can rule out neurological disorders?

A. I believe I stated that it is my opinion that neuropsychologists are particularly well suited. The Court will ultimately make the determination whether I am, I suspect.

Q. Fair enough. But that is because they can rule out neurological disorders?

A. I believe I said neurocognitive disorders. I want to be careful about that distinction, not being a physician.

Q. And neurocognitive disorders, then, in your view, must be a substantial component of what makes someone not competent for execution; is that right?

A. Again, we have to be careful, because there are diagnostic entities that we call neurocognitive or neurobehavioral. When we talk about the diagnostic entity, there are cognitive processes that I think are essential in making a determination of whether somebody lacks rational understanding and, therefore, competence.

Q. So, I guess you would agree, then, that neurocognitive disorders would be a big reason that someone would not be competent for execution?

A. Well, again, I think you just missed what I've said and restated what you had said prior to that. The minute you say a neurocognitive disorder, you have assumed that a constellation of symptoms has been found and a particular neurocognitive disorder has been diagnosed.

What I'm suggesting is that there are aspects of neurocognitive functioning or processes that might not rise to the level of a true diagnosable neurocognitive disorder, and those processes are important in understanding competence.

Q. But you understand that the law in this case is that it has to be not just a neurocognitive constellation of function, but it has to be a psychotic disorder?

A. I do understand that.

Q. Okay. So, whether a neuropsychologist is capable of ruling out neurocognitive processes and investigating them, what really has to be addressed is whether the person has a

psychotic disorder?
A. And in being able to evaluate that and look at those dimensions, aspects of cognitive functioning are important, yes.
Q. But you would agree with me that other mental health professionals would be equally capable of evaluating someone's rational understanding, their interface with the world, whether or not they had a psychotic disorder, people like psychologists or psychiatrists?
A. I don't know how to respond to the question with the word "equally." I don't know how best to gauge that. Would they be competent to do so? Of course, they would. The issue of to what extent it would be equal, greater, or less, short of having a bias, I have no data on how to speak to that.
Q. Nobody, whether they are a neuropsychologist or a psychologist or a psychiatrist or a mind reader, can really tell what's in another person's mind?
A. That is absolutely true.
Q. If my husband acts like he loves me and tells me that he loves me, I assume that in his heart he feels like he loves me and he thinks he loves me, but I don't have any way of knowing, right?
A. A neuropsychologist would say the heart has nothing to do with that. It pumps blood. But, yes, the basic tenet of what you said is accurate.

Q. In fact, if he acted like he loved me and he told me he loved me, it could be motivated by guilt or duty, obligation, but I couldn't ever really know what was inside; is that right?
A. That certainly sounds correct, yes.
Q. And that's true for the Court, too?
A. Yes.
Q. If the Court cared whether my husband really loved me. It's true for other questions that the Court has to address?
A. Indeed, it is.
Q. And, so, I would imagine you would agree that the Court and you are fairly limited to looking at a person's actions and their words and extrapolating from that what they really think or believe or feel?
A. Keeping in mind the fact that my profession and my license suggests that we are more inclined to do that based on our knowledge, experience, and data set than the general public might, I wouldn't be so bold as to suggest whether the Court, the final arbitrator, is more or less able to make those distinctions. But certainly with regard to my license, the State of Texas and my profession says that we are better at making those predictions than the general public would be.
Q. But what I'm saying is you make those predictions based on your data set, which comes from things like their actions and their words. You don't have a human lie detector or license?
A. Indeed, I do not.

Q. And you don't have x-ray vision into what language is going on inside Mr. Eldridge's head?
A. (Nods head.)
Q. You're nodding, but you have to say out loud.
A. I'm sorry. I would probably need PET scan vision in order to look at that, but, no, indeed, I do not have PET scan vision either.
Q. Okay. A PET scan would tell you what he's thinking?
A. It would allow the ability to look at activation of functional areas, but, no, I'm just suggesting x-ray would not do it for me, probably a PET scan wouldn't either.
Q. What does the literature say is the most common reason that someone is not competent for execution?
A. The -- I'm sorry. Repeat that one more time.
Q. What does the psychological literature --
A. Yes.
Q. -- say is the most common reason someone would be noncompetent for execution?
A. I think ultimately because they don't have a rational understanding because of the presence of a psychotic disorder.
Q. Well, there's more than one psychotic disorder, right?
A. Yes, there are.
Q. So, I guess fill me in. What literature have you been reading about competency for execution?
A. I'm not very familiar with the literature in competency for

execution per se.
Q. What literature do you read when you're doing a competency to stand trial evaluation? What literature do you rely on there?
A. The things that I look at it in terms of that have more to do with the question of understanding the feigning -- I keep wanting to say malingering -- the feigning literature in terms of what's been looked at in a forensic context.
Q. And you don't like using the word "malingering" even though it's in the DSM?
A. Well, it's a very bad word in the DSM. But the standard in the profession is to use the word feigning. Some of the biggest authorities in the area suggest that malingering is not the proper word to use. I have no problem with it. I'm simply attempting to be appropriate in the accepted use of the word.
Q. And the profession that you're referring to as far as accepting that word would be the neuropsychological profession?
A. No. It would be the -- if one determines that there is a separate forensic profession, it would be that profession. It's people like Rogers, who have argued that the word "malingering" is not an appropriate word to use. That "feigning" is a more appropriate word.
Q. You mean that there's actual disagreement with the psychological community in what is represented in the DSM?
A. Certainly there is, without a question, especially for the

V codes, such as malingering.
Q. So, I would like to talk a little bit about the definition and the perspective that you employed in this case. Your report captures -- or I should say your reports, capture your opinion as accurately as possible?
A. Yes, ma'am.
Q. And you were thorough and complete?
A. I certainly hope so.
Q. And you did your evaluation exactly as you state in your report? Of course, you had to leave things out for confidentiality reasons, but what you say in your report is accurate?
A. Yes, it is.
Q. And you didn't omit anything that influenced your judgment?
A. I did not.
Q. Would you agree that you apply the scientific method in testing hypotheses, acquiring data, evaluating the data, and deciding what the data tells you is the answer?
A. The use of the scientific method in its normal meaning is a little difficult to apply directly to the assessment process. We look at things like control groups and repeat observations. But if I understand the spirit of your question being that we apply the objective standards of our science, of our profession, I would answer in the affirmative.
Q. You think it's important to consider all of the evidence?

A. I do.
Q. And would you agree that you start with -- I don't remember the terminology you used yesterday, but I would think of it as a null hypothesis?
A. I think that's well stated, yes, ma'am.
Q. If you agree with me on that, tell me what you mean by the null hypothesis.
A. So, scientifically when one does a research study and attempts to determine whether something might be true, the idea being, for example, that Drug A will improve symptomatology, the null hypothesis states the opposite. It's that there will be no change in this drug. So, within this context, the null hypothesis would essentially be coming in and saying -- I mean, it becomes a bit difficult, because if you walk in believing this gentleman is malingering, to use that word, the null hypothesis would be he's not. And if you walk in believing he is (sic) malingering, the null hypothesis would be he is.
Q. Well, I want to make sure that I understand. You are approaching this case as a scientist would. So, are you saying you come in believing one thing or another from the start?
A. Well, respectfully, I'm approaching this case as an objective evaluator would. I think, again, a scientist requires more than N equals 1. And even in research that's done scientifically that is case studied based with N equals 1, we need things like reversal designs. There is no way of doing

a control group with a single individual.
Q. Then perhaps I'm using scientifically or a scientist too broadly.
A. Perhaps.
Q. What personal beliefs you have played no role in your evaluation in this case; is that correct?
A. I certainly believe that that is a correct statement.
Q. So, leaving aside whether initially you think he's malingering or you think he's not malingering at the start, what was your null hypothesis when you started evaluating this case? What was the hypothesis that you're testing or trying to establish?
A. I'm better with that question. The hypothesis that I'm testing is that this individual may or may not be demonstrating significant cognitive and psychological impairment.
Q. How is that a hypothesis that you test? That's not a hypothesis.
A. But it is. It's a two-tail test. It is absolutely consistent with scientific hypotheses.
Q. Okay.
A. It's the difference between one- and two-tail testing. It is a perfectly scientific statement.
Q. So, you are approaching this as a scientist?
A. Well, I'm attempting to approach the reasoning that you're laying out and be consistent with the question that you're

asking.
Q. Okay. Don't think about my question.
A. Fine.
Q. Just tell us how you approached this case. Did you approach this case with a two-tail hypothesis?
A. No, I approached this case with an open mind, that I had no idea what the facts were about this individual.
Q. Sure. And --
A. But I start with a blank slate.
Q. And, so, you don't have a hypothesis that you're testing in this case?
A. One always has certain things that they know they have to look at. So, there are some areas that we hypothesize would be relevant but in terms of outcome or conclusion, no.
Q. Okay. So, we're not -- we're talking in circles, and I don't want to use the word hypothesis in five different ways. I think we both understand what the concept of a null hypothesis is. And what I'm trying to get at is, when you start working on this case and you are acquiring data and putting data out and seeing where the data leads you, if I understand what you're saying correctly, you are saying that you do not have a hypothesis to test. You are neither saying my hypothesis is he's not mentally, let me collect the data, and see if that challenges the hypothesis or supports it, nor are you saying, my hypothesis is he is mentally ill and I'm

going to test that against the data; is that correct?
A. The difficulty I have with that is if we look at any individual measure, a measure of memory, obviously in giving it, we've asked both questions. That's the whole reason we chose it. The one question is, he has a memory problem. The other question is, he does not have a memory problem. This is a two-tailed hypothesis, if you're going use that phrase. So, with anything that we collect, we ask the question of whether the finding is significant or not.
Q. So, the answer to my question was, that's right, I didn't have either hypothesis as I was sorting through the data?
A. I did not have a preconceived notion of what I expected to find, hoped to find, or thought I might find.
Q. Nor did you create in your mind a null hypothesis to test the data against?
A. I'm trying to avoid the circularity that was obviously frustrating you. When you --
Q. It's a very -- I'm just asking what was in your mind. I'm not asking you to explain. Just tell me --
A. The word "hypothesis" is never in my mind --
Q. Okay.
A. -- as I am doing an investigation of a single individual.
Q. Okay. Mr. Eldridge's -- you quoted in your report that Mr. Eldridge's attorneys argued that Eldridge has a mental condition preventing him from accurately perceiving,

interpreting, and/or responding appropriately to the world.
Why did you say "and/or"?
A. Because that was my understanding of the position that they had made, that one or all of those things may be true.
Q. If one of those things is true, is that enough to show that Mr. Eldridge does not have a rational understanding?
A. I don't believe that is enough.
Q. Okay. Is that enough to show that he does not have -- how did you put it, an accurate interface with reality?
A. Depending on which of them is true. It is a possibility that one of those could be enough.
Q. Okay. You also said that the central questions to be resolved are whether Mr. Eldridge has evidence of a diagnosable mental illness; if he does, does it preclude him from this accurate reality interface; and if he has an impairment in reality testing, does that preclude him from having a rational understanding in a manner that would suggest he is incompetent. Does that sound like your understanding of your job in this case?
A. That is what I wrote. That is my understanding.
Q. Okay. So, I assume from the way you phrased that, that somebody could have a rational understanding of the reason for conviction and that they were going to be executed in a manner that did not suggest he was incompetent to be executed?
A. I'm not sure I process that question. A person could have

a rational understanding --
Q. What you said was that the third part of your job was to assess if he has an impairment --
A. Yes.
Q. -- does it preclude him from rationally understanding the link between crime and punishment in a manner that suggests he is incompetent for execution?
A. Yes.
Q. So, that implies that there is a manner that would not suggest incompetence; otherwise, it's just repetitive verbiage, right? I mean, if a rational understanding between the link is enough to be incompetent, then it couldn't have a manner --
A. I don't know how to follow the logical semantic argument. What I will say is one could conceive of a situation where there's not a rational link, but there is not the presence of a severe psychotic disorder. And as I understand the ruling of the court in *Panetti*, that would not raise to the level of incompetence.
Q. Okay. So, who told you that the definition, that three-pronged does he have a mental illness, does it preclude him from interfacing with reality, and if it does, does he have a rational understanding, who gave you that definition?
A. I don't think I would talk about that as a definition. That is the process in which I used.
Q. Who gave that you process?

A. I gave me that process through many years of experience and training.
Q. But you haven't read *Panetti*?
A. I have read portions of *Panetti*.
Q. Okay. So, many years of experience and training before *Panetti* came out didn't tell you that, right, because the law wasn't the law yet?
A. I understand.
Q. So, you're saying that you got your understanding of your process in this case from the portions of *Panetti* that you read?
A. The basic tenets that I lay out, those three things, I think are relevant issues that we would raise with any question that we look through, is there a significant issue, does that significant issue affect on a day-to-day life, does it rise to the level that treatment or intervention or exculpatory data would be significant? So, I think it's a very appropriate clinical process and appropriate way of reasoning. Obviously I stated that in response to what the defense team had suggested to me was their argument. So, that three-pronged approach, is there something there, is it a practical significance, and does it ultimately affect the question at hand, is a very logical and appropriate way to take it from an assessment perspective.
Q. What are the delusions that Mr. Eldridge has that are relevant for the Court today? If I understand correctly

there's basically four, from reading your first report: That Cynthia is alive -- would you agree with that as being one of them?
A. Yes, that is correct.
Q. One of them is that Mr. Eldridge leaves the prison and has a normal life?
A. That's correct.
Q. The third would be that the guards are out to get him?
A. That has been the delusion, whether that continues or not, but I haven't seen it as a separate delusion. I have not delineated the question of whether or not the guards are out to get him. I have expressed that specifically in relation to the food poisoning issue, which may be the fourth thing on your list.
Q. No. I was saying the guards out to get him as including the food poisoning issue.
A. It was more than the guards. See, I don't look at it as the guards out to get him. I look it as the people are poisoning my food delusion. It wasn't just the guards that were implicated in that delusion.
Q. Okay. So, his other complaints about the guards being out to get him, harassing him, stopping his mail, banging on his door, kicking his door, going through his property, stealing his property, making his headphones not work, all that stuff is not a delusion?

A. It may be part of his delusional system, that is a possibility. The spirit of your question, as I understood it, is what I was discussing as delusions within my report.
Q. Agreed.
A. If we argue that that's a delusional system and I did not adequately consider or represent that, that is a possibility. But what you just stated is not part of what I have argued as part of his delusional system.
Q. And what you believe his delusional system is, is limited to his belief that the food is being poisoned?
A. That is what I have represented, yes, ma'am.
Q. Okay. And it seemed like from your report, that there was a fourth delusion and that was that human life has alien origin?
A. I haven't extracted that as a specific delusion. I don't think I've talked about it in that way. He certainly has expressed that belief. I don't know if it's a fixed false belief that is something that is resistant to input and difficult to change. I simply know that it's a belief that he has that is outlandish.
Q. So, you would or would not call that a delusion?
A. I don't think it rises to the level of being a delusion.
Q. So, we're talking about three delusions then?
A. That is how I see it, yes, ma'am.
Q. Okay. During your testimony yesterday, you defined a

delusion as a fixed false belief despite reasonable evidence to the contrary; is that right?

A. There's a more specific definition within the DSM, but I suspect that you accurately portray the paraphrasing that I gave, yes.

Q. Okay. So, that is the definition that you applied in this case?

A. That is the definition I applied in this case.

Q. Okay.

A. There are other tenets to that definition.

Q. So, I'm putting up here on the Elmo page 821 from the DSM. Can you see that okay?

A. Okay.

Q. And it says, "A false belief -- Delusion: A false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person's culture or subculture."

And then I highlighted in the wrong place. It is, "E.g. it is not an article of religious faith."

Is that the full definition that you applied in this case?

A. There is obviously yet more to that definition, but,

indeed, it is.
Q. Okay. So, you would agree with me that typically schizophrenics have issues with working memory, not long-term memory?
A. Given some of the nerve pathological findings in schizophrenia, that may well change over time, but, indeed, they are far more likely to have problems with working memory systems than with long-term memory, that is accurate.
Q. And long-term memory would be things like knowing where you grew up, your family, things that happened a long time ago?
A. Those would be examples of long-term memory, yes, ma'am.
Q. And short-term memory would be something like your phone number that -- not your phone number, but if someone tells you, hey, call me, and here's my phone number, that kind of, like, short-term input?
A. We make much more sophisticated distinctions within my profession. I don't know if you need me to speak to that or not.
Q. Would you agree with what I said?
A. No, I would not.
Q. Okay. So, tell me what the more sophisticated definition of working memory is?
A. What you just described with a phone number would be a working memory process. Working memory and short-term memory are not the same process.

Q. Okay. So, we're not talking -- when we're talking about the kind of memory problems schizophrenics have, we're not talking about short-term memory. We're talking about working memory?
A. No, we may also be talking about short-term memory.
Q. Okay. So, do schizophrenics have problems with short-term memory?
A. They often do, yes, ma'am.
Q. So, they have problems with short-term memory and with working memory, but not so much with long-term memory?
A. Certainly unless the disease process has progressed over a long period of time, yes, that is an accurate statement.
Q. Okay. And your own testing indicates that Mr. Eldridge does not have such a memory impairment; is that correct?
A. I'm not sure what you mean by "such a memory impairment."
Q. Long-term memory? Did you test his long-term memory?
A. We don't typically test long-term memory. We don't have the opportunity to come back weeks to months later and see if somebody still remembers things. We know that he is not good at giving memory from things in the past. The things that we look at that are long-term memory, things like the information subtest on the WAIS, we can't guarantee that a person knew it in the first place.
Q. So, the testing that you administered doesn't look at, for example, things that you can verify about his past and asking

them? It talks about it in a more experimental sense, like, I'm going to tell him something and I can't come back in six months and see if he remembers it?

A. Right. The psychometric measures certainly don't allow for direct testing of long-term memory, but as you correctly point to, there are things that one can look in the record that are factual in nature and attempt to determine whether something that we know he knew once, whether he still knows it or not.

Q. And actually we can't really know whether he does remember it or not. All we can know is that he says he doesn't remember it?

A. That's absolutely accurate, yes, ma'am.

Q. Would you agree with me that it is not common to be a schizophrenic and only have hallucinations and delusions but not display the disorganized thought and avolition and alogia, the so-called negative symptoms?

A. No, actually I would not agree with you and the literature would not agree with you on that.

Q. So, it's your position that it is common to have schizophrenia with hallucinations and delusions but organized thought, organized behavior?

A. It is not typical that behavior and thought are organized. There's a distinction in terms of -- again, all these things lying in a continuum, there is a distinction about whether or not -- if he can point to the board that was used yesterday --

whether it reaches the level of truly disorganized. But, indeed, it would be unusual for a person to have hallucinations and delusions and to have organized thought and behavior. That, I would agree with.

Q. Okay. Okay. So, would you diagnose someone as schizophrenic if the only things that they had in Category A were hallucinations and delusions, but there was no evidence of the other issues in Category A? And I think what's up on the board, if I'm not mistaken, is 301. I could be wrong.

MS. FERRY: 312.

MS. ODEN: I'm sorry. 312. Thank you.

BY MS. ODEN

Q. It's page 312 of the DSM. Would you diagnose somebody if they only had A1 and A2 and did not have A3, A4, or A5?

A. Well, as you can see, according to the diagnostic criteria, "an," but, indeed, I would not.

Q. Okay. And why would you not?

A. Frankly, because I would find that highly suspicious.

Q. Okay. Highly suspicious of what?

A. Of malingering or feigning.

Q. Okay. And for our purposes, malingering and feigning are basically the same thing?

A. They are.

Q. Okay.

A. And I'm happy to use malingering, if you would rather.

Q. I would rather you use what you think is appropriate.
A. Okay.
Q. I am going to continue to say malingering.
A. Sounds great.
Q. Is it possible to be schizophrenic and to be competent to be executed?
A. Yes, it is.
Q. How about hearing voices and being competent for execution?
A. No problem with that.
Q. How about having delusions of persecution and being competent to stand --
A. It is entirely possible you could still be competent.
Q. Okay. I'm going back to the DSM, page 299. I would like to read a section and talk about it.

"Although bizarre delusions are considered to be especially characteristic of schizophrenia, bizarreness may be difficult to judge, especially across different cultures. Delusions are deemed bizarre if they are clearly implausible and not understandable and do not derive from ordinary life experiences. An example of a bizarre delusion is a person's belief that a stranger has removed his or her internal organs and has replaced them with someone else's organs without leaving any wounds or scars. An example of a nonbizarre delusion is a person's false belief that he or she is under surveillance by the police."

Do you agree with that?
A. I do agree with that.
Q. Okay. So, the three delusions that you find relevant for the case today, the delusion that Cynthia is alive, under that definition that I just read, would that be considered a bizarre delusion or nonbizarre delusion?
A. It's a nonbizarre delusion.
Q. And that he leaves the prison, goes to work, has a family, and a normal life, is that a bizarre or nonbizarre delusion?
A. Many people have those other things. It is a nonbizarre delusion.
Q. And his belief that the guards are putting poison in his food, is that a bizarre or nonbizarre delusion?
A. It would be plausible. It is not bizarre.
Q. Okay. What's the difference -- what's the difference between thought content and thought process?
A. Keeping in mind that thought is always reflected in words, because as you say, we can't read their mind, thought content typically deals with the specifics of what's said. Process has more to do with the ebb and flow, the ability to get points across, for example. It probably taps more into the question of the ability to reason or do inferential thinking, again, based on the words that are used and what we can make of that.
Q. Would you agree with me if I said -- and this is probably not as sophisticated an explanation as I know you would be able

to provide, but just bear with me. Would you agree with me if I said that the reason schizophrenics usually display disorganized speech is because they're attending to all this crazy stuff going on in their head and it's hard to put things together in the logical, goal directed, linear fashion that you and I are hopefully trying to engage in right now?

A. It's difficult because there's evidence of parietal lobe dysfunction in schizophrenics as a group, and there may be some direct neuroanatomical reasons that they're having problems with language and language production. But the statement that you make is a plausible reason why that could be happening at least sometimes for some schizophrenics.

Q. So, there would be some schizophrenics that have basically a brain -- an organic, something wrong in their brain that prevents them from organizing their language, parietal lobe dysfunction or whatever?

A. Correct.

Q. And some schizophrenics maybe don't have that yet?

A. Right, that would be true, yes.

Q. Okay. And, so, some schizophrenics are neurologically impaired and that's why they are the way they are; and some haven't developed that far and so if they have disorganized speech, it's because they're attending to crazy stuff in their head?

A. Well, we have to be careful, because if we presume, as the

literature is still attempting to ferret out, that there are underlying neurochemical defects in schizophrenia, the very manifestation of schizophrenia may be an abnormality of the brain that is at a molecular level, one that we cannot see based on imaging studies. So, the fact of the matter is, yes, we may not see the anatomical deficit until it's progressed further, but it doesn't mean that there aren't early precursors. I don't think the distinction is quite as clear as that.

Q. Okay. But you would agree with me that someone can report things in their thought content, in other words, report what they're thinking that are illogical or bizarre and not have illogical or bizarre thought processes to go along with it?

A. It is certainly possible, yes.

Q. Okay. For example, if you and I were having a conversation like we are right now, asking questions, responding, answering, et cetera, and I were to just tell you that I think someone put a radio chip in my head and it transmits my thoughts to the CIA, would you call that disoriented?

A. I wouldn't call it disoriented. That's a different term.

Q. Would you call it an illogical thought process?

A. Again, we run to the issue, it's illogical content. It's likely that your thought process is also illogical, but that would be an inference on my part.

Q. Okay. Can we hypothecate -- I know that's not really a

word. Can we create a hypothesis that Mr. Eldridge is competent to be executed and he believes that the guards are poisoning his food?
A. That is a possibility, yes.
Q. Okay. Can we hypothesize that Mr. Eldridge is competent to stand execution -- I keep saying stand execution -- that he's competent to be executed, and he believes that during day he goes home and he works with his brother?
A. It is certainly possible that that could be the case, that one could postulate that.
Q. Okay. And could Mr. Eldridge report that he thinks Cynthia is alive and yet understand that he has been sentenced to death for murdering her?
A. That's a harder one for me.
Q. That's the delusion that seems completely inconsistent with being competent to be executed?
A. That is the one that creates the greatest difficulty with a rational understanding, in my opinion, yes.
Q. Okay. Can a person have schizophrenia in the morning and not have it in the evening?
A. The answer to that is, yes, of course, they can, but not quite in that specific a manner. Schizophrenia is certainly a waxing and waning thing, as is every mental illness. Even crazy people aren't crazy 24/7, but, indeed, if they are always crazy in the morning and not in the evening, that would not

make sense.

Q. I think you were just talking about there being potentially biological causes for schizophrenia, either a visible neurological deficit, like a parietal lobe dysfunction, or something at the molecular level. So, with those thoughts in mind, you're saying that it's possible for them to have that in the morning and then not have that in the evening?

A. Again, it wouldn't be consistent if they had it every morning and they didn't have it every evening. But, yes, of course, it is. There are many conditions that people have. People who have diabetes aren't always symptomatic. People who have allergies --

THE COURT: Well, before we get too deep into some semantic weeds, if the question is, is someone schizophrenic morning and evening, but it waxes or wanes in severity, your answer is yes.

THE WITNESS: Yes.

THE COURT: But that's different from saying, they can be schizophrenic in the morning and not schizophrenic in the afternoon. I think the question is: At some point are they so -- have they so declined to the symptoms that they are, in fact, not schizophrenic at all, or is it your position that once they are diagnosed as schizophrenic and it's a valid diagnosis, they are schizophrenic and it's just a question of the severity of the symptomatology?

THE WITNESS: That does seem to be what the literature says, that while we can improve symptomatology substantially, even some evidence that suggests that cognitive behavioral therapy can go a long way towards some delusional symptoms, that schizophrenia probably cannot be cured.

THE COURT: So, what you're saying is that you think that someone once diagnosed properly is schizophrenic and it's just a question of how bad the symptoms are?

THE WITNESS: Right. Symptoms can certainly improve. They're unlikely to go away.

BY MS. ODEN

Q. Thank you. How do you tell if a person is having an active psychotic episode right then?

A. Obviously based on what you see or hear, you have to observe what's happening and make an inference that it's consistent with those findings.

Q. There isn't a test that will tell you that the person is actively psychotic?

A. There really isn't.

Q. Okay. How long do active phases usually last?

A. Active phases can be highly variable, and I know that there is a specific answer. I don't know that I know it, in terms of what the mean rate is. Any answer I give would be a guess.

Q. Would you agree with me that if a person is in a facility where they're being diagnosed for mental illness and they're

not permitted to leave that facility, that that is an inpatient facility?
A. I would agree with that, certainly.
Q. When did you begin your work on this case?
A. I don't --
Q. Roughly.
A. I don't know the answer to that, I'm sorry to say. Obviously sometime before that first evaluation, perhaps by as much as a month, but I would have to look at the date, which I'm happy to do if you need to me to.
Q. So, your first interaction with Mr. Eldridge was February 9th, 2010. So, you started work on this case sometime in early 2010?
A. I don't know for certain. Obviously that's in my records somewhere. I don't know the date, but that sounds about right.
Q. Okay. And you reviewed -- the records that you write, the list in your report, you reviewed those before you saw Mr. Eldridge?
A. I reviewed at least a portion of them. It would be difficult for me to know whether I had reviewed all of them before I saw him the first time or not.
Q. It would be difficult for you to know whether you had reviewed them all before you saw them?
A. Because many of them came to me at different points in time; and exactly the date at which I received a particular set

of documents, I don't have that information.
Q. Okay.
A. So, they were reviewed when I got them, but I don't know which ones were reviewed on which date.
Q. Okay. When did you write your first report?
A. So, I finished the evaluation on May 17th. Again, this would be in the records. I don't have it, but I'm -- you know, I really couldn't even guess. They're in the records. Those are not records that I have. They will be in the billing records.
Q. The billing records?
A. Yes.
Q. Okay. On the second page of your first report, you list all of the records that you reviewed and you said that they were selected records, like selected TDCJ records, selected prior incarceration --
A. Right.
Q. -- mental health, MHMR. Those records were given to you by defense counsel; is that right?
A. Yes, ma'am, they were.
Q. And those are records that appear in six, seven, and eight of that binder?
A. You know, I didn't create the binder, and I'm not totally sure.
Q. Okay.

A. I have no reason to disagree with your representation, but I don't know for certain.
Q. Okay. Does that look like about the right quantity of --
A. No. It's hard for me to know, but it certainly seems like I reviewed many more records than that.
Q. Okay.
A. There were transcripts and -- I mean, you can see the enumeration of the list. There were other things that I know are not part of the exhibits, because I didn't see them listed.
Q. Okay. Do you think that the defense counsel sent you a box like that with -- see down next to -- you probably had to step over it?
A. I do.
Q. Do you think they sent you a box with four binders full of paper?
A. Virtually everything that I got prior to the documents, the exhibits for this trial -- for this hearing, came via PDF and even though I'm a technological guy, it's hard for me to make that transfer.
Q. Okay. So, at this point you can't say for sure whether you reviewed everything that appears in those four binders that are the respondent's exhibits?
A. I don't know all of which is in those four binders, and I have not seen all four binders, short of stepping over them.
Q. Right, gotcha. All right. You reviewed also some other

documents that were supplied by the defense counsel, like the memorandum of Jester IV staff interviews and Mr. Lee Wilson's notes, some handwritten notes in the case; is that right? If you listed it in your record --

A. They were things that I reviewed, yes, ma'am. Obviously some of these have been quite some time ago and it's difficult to think of a particular document in isolation. There are things I would undoubtedly recognize but wouldn't necessarily recall.

Q. Okay. Well, I'm going to put a document up on the Elmo. Jester IV interviews with Gwendolyn Bundy, Alan Evans, and Dr. Patel. Does that look like the summary of Jester IV staff interviews that you reviewed?

A. Ma'am, are you suggesting that this is a document that I've seen before or --

Q. Well, perhaps it was in a different typeface or different organization. Does that look familiar?

A. But this actual page is what you're saying is something that you believe that I've seen before?

Q. Does that look familiar?

A. I don't recall having seen it. It is possible that I have. It's not one that jumps out at me.

Q. So, it doesn't stick out in your mind as being something important that you considered?

A. In terms of this particular page is what I'm saying. I've

not read the page.
Q. Okay.
A. It is entirely conceivable that I have knowledge of what's written there. I'll be happy to read it if you would like me to.
Q. No, that's okay, because this is going to be a long day.
MS. ODEN: I'm just going to mark this as Respondent's Exhibit 70, and offer it for introduction. Any objection, Laura?
MS. FERRY: Your Honor, I do object to the admission of this document, which obviously contains hearsay. I mean, I don't dispute for identification purposes that this is a document that was provided to Dr. Roman, but I object to the admission of this document in evidence.
MS. ODEN: I can establish some foundation.
THE COURT: All right.
BY MS. ODEN
Q. Doctor, would interviews conducted by someone with staff at Jester IV, staff like Gwendolyn Bundy -- do you recognize that name from the records?
A. I do.
Q. Okay. Alan Evans, do you recognize?
A. That one, I'm embarrassed to say, does not jump out at me, but it's not always easy to decipher.
Q. Yeah. Dr. Patel?

A. Certainly.
Q. Those names appear to be treatment professionals that appear in Mr. Eldridge's records?
A. Indeed.
Q. And would that be the kind of information that a professional in your position would rely on in evaluating the case?
A. Insofar as there are records from those individuals, of course, it would, yes.

MS. ODEN: Your Honor, even if this isn't introduced into evidence, I would like it marked and made a part of the record since it is something that he thinks that he may have considered.

THE COURT: Why can't it be admitted for a limited purpose, that is, to show what this witness included in what he considered as opposed to being admitted for the truth of the statements in it?

MS. FERRY: For that limited purpose, I don't object.

THE COURT: All right. It's admitted for that limited purpose. What's the exhibit number again?

MS. ODEN: It's 70, Your Honor.

THE COURT: Thank you.

BY MS. ODEN
Q. Let me see if I can unzoom this. That's as unzoomed as it's going to get. So, does this look familiar to you? I can

turn the page if you want me to, and I have a paper copy if that's easier.

A. No, no, you're fine. Let me just put on my spectacles.

It does not look familiar to me. Again, I've reviewed so many pages of documents. This does not look familiar to me.

Q. Okay. I'm going to give you this just because it's just so awkward to turn pages on the Elmo. If you want to look through that and see if it jogs your memory -- if I represented to you that these were Lee Wilson's notes provided to me by Mr. Eldridge's attorneys as what was provided to you to review, do you think maybe you didn't review it, maybe it was, you know, in the stack and --

A. I honestly have no recollection of having seen this document ever.

Q. So, if you listed it in your report as something that you reviewed, that may have been a mistake?

A. I don't know that I made a reference to reviewing this particular document. I don't know what I would have called it. I have no idea what this document is.

Q. Okay. You know, I could have sworn that it said that you reviewed Lee Wilson's notes.

A. I saw -- I'm sorry, I saw something about an affidavit from Mr. Wilson. I don't believe I have ever seen this document.

Q. Okay. Hang on one second. Okay. So, I am looking at

Petitioner's Exhibit 4 right now.

A. Okay.

Q. And this is included in the binders and has already been introduced into evidence and it purports to be a list of records reviewed by you and right here it says "a memorandum of Jester IV unit staff interviews."

A. Okay.

Q. And then right down here, it says, "notes provided by Lee Wilson." So, you're saying you might have reviewed the Jester IV interviews that we just introduced as 70?

A. I did not recognize that document either.

Q. You didn't recognize it?

A. I didn't. But this one I'm -- I'm quite sure I haven't seen. It's hard to know for sure, obviously, but it -- nothing about it jogs my memory. I don't understand why another inmate's name is here. I don't understand these various markings or distinctions. It jogs no memory whatsoever. The other, at least I recognized those names.

Q. Okay.

MS. ODEN: Well, just for the record then, Your Honor, I'm going to move to introduce for the limited purpose the Lee Wilson notes as Respondent's 71, for the limited purpose just so the record is complete, what he did not look at.

THE COURT: All right. Any objection to introducing Exhibit 71 for that limited purpose?

MS. FERRY: I don't object to that, Your Honor.

THE COURT: All right.

BY MS. ODEN

Q. So, you said you remembered an affidavit by Mr. Wilson. Does that look like the affidavit that you reviewed?

A. Can I see a different page of it?

Q. Yeah, absolutely.

A. I think I would recognize it better from perhaps not the first and standard page.

Q. Sometimes the Elmo is better for the audience than it is for the witness.

A. Yes. I believe it was a very long time ago, but this looks familiar as something I've reviewed.

Q. Okay. And that list that we talked about as Respondent's Exhibit 4 also talks about a declaration of Benjamin Smiley. Does that jog --

A. It does. I can't recall exactly what it was, but, yes, I remember having reviewed one.

Q. Does that look like the declaration?

A. Yes, that does look like the declaration.

Q. Okay. But if you don't mention it in your report, it's probably not something that was a big deal to you, is that right, not something you relied on as additional data to support the --

A. I would say this particular document is not something that

I relied on in any specific way.

Q. Okay.

MS. ODEN: Your Honor, I would mark this 72 and move to introduce it for the same limited purpose.

MS. FERRY: No objection.

THE COURT: Admitted for that limited purpose.

MS. ODEN: Yes, Your Honor.

BY MS. ODEN

Q. And the last document that I wanted to ask you about was the declaration of Lee Wilson. Do you remember reviewing that?

A. You know, interestingly, I don't specifically remember reviewing this, but I believe that I have.

Q. Okay.

A. I certainly -- I'm familiar with the content of it. I --

Q. Okay.

A. The document isn't jumping out to me, but I believe it's something that I reviewed.

Q. Okay.

MS. ODEN: We would offer the Lee Wilson declaration as well, Your Honor.

MS. FERRY: No objection for the same limited purpose, Your Honor.

THE COURT: Admitted for that limited purpose.

BY MS. ODEN

Q. Do you recall looking at the actual exhibits that were

introduced during the Atkins hearing, the mental retardation hearing in this Court from 2007? Did you ever see those?
A. I recall reading transcripts. I don't believe I reviewed exhibits. I'll go further. If I was supposed to review the exhibits, I'm sorry to say, I did not, because I saw no exhibits.
Q. Okay. And if they don't appear in any list of records that you reviewed, I'm not trying to trip you up, I'm just asking, you don't think you saw those?
A. I'm quite sure I didn't see them. I just didn't want to get in trouble with Ms. Ferry for something I perhaps was supposed to have reviewed. I have not seen them.
Q. Okay. Did you have access to the complete medical and psychological records from Mr. Eldridge's incarceration in the Harris County Jail?
A. I don't know. I saw records. I don't know what was provided to me.
Q. Okay. At the time that you wrote your first report, you hadn't read any of his mail; is that right?
A. Again, it's the issue of timing. Although I suspect that I had read some of his mail, it's so difficult going back, you know, nearly a couple of years. I don't recall the dates at which I received particular documents.
Q. If you had read his mail when you wrote your first report, would you have said that that was one of the documents that you

reviewed?
A. It would have been listed in the documents. Well, I don't always -- I don't always know when documents are provided, especially if they're provided in a somewhat more selected or piecemeal in terms of how they come in fashion, if I have accounted for everything I have looked at. It is certainly my intent to do so. But, yes, it is my belief that if it wasn't listed, I hadn't reviewed it.
Q. Okay.
A. Although I certainly had thought that I had seen some of his correspondence before the first report. That may be an omission on my part.
Q. So, you think that you did review some of his mail when you wrote your first report?
A. As we sit here now, I know that I've reviewed his mail, and I'm simply guessing that it is extremely likely that I had reviewed it when I wrote my first report. I just don't remember for sure.
Q. Okay. So, we have here the first page of your report, with a -- the first page only has a partial list of the records that you reviewed and the second page continues. And if it doesn't list that you had reviewed his mail, you may have just left that off?
A. It is a possibility that I may have omitted that.
Q. Okay. You would agree with me that there's no history of

psychiatric problems like hallucinations or delusions or any diagnoses of schizophrenia in Mr. Eldridge's past prior to his arrest for capital murder?
A. There certainly is no documented history of any prior issues of that nature.
Q. Okay. How old was Mr. Eldridge when he reportedly first had his hallucinations or delusions?
A. Well, he gives a report of potentially having had hallucination as a child. He's very vague about that. But in terms of something documented within the record, I believe the first hallucinations were reported -- they would have been what, January -- I'm sorry, January of 1993, I believe was the offense.
Q. I'm talking about Mr. Eldridge's report.
A. Yes.
Q. Mr. Eldridge reporting, whether he reported it in a --
A. I'm sorry. Not necessarily documented, but his report?
Q. Yes.
A. He has never, in my understanding, given a very specific statement about a date or an age.
Q. Hasn't he said that he was having hallucinations when he was seven or eight?
A. He has. He has been very inconsistent. I think at one point he said something about ten, but he has suggested that it goes back to childhood. He never reported that to me in a

definitive way, by his own report.
Q. Do you believe that he had childhood onset schizophrenia?
A. I do not believe that he had childhood onset schizophrenia.
Q. And why are you not comfortable making that diagnosis?
A. Obviously it's impossible to say that he didn't, but the way that I understand his history, his progress through school, the things that he did, it seems highly inconsistent with the idea that he would have had childhood onset schizophrenia.
Q. So, he was having hallucinations but wasn't schizophrenic?
A. He was reporting that he had hallucinations retrospectively. I have no idea whether he was having hallucinations or not.
Q. In your report on page 3, you note that Mr. Eldridge had no --
A. First report?
Q. Yes. And then -- I'm sorry. If I'm talking about your report, unless I say your second report, I'm always instinctively meaning your first report.
I'm going to zoom this a little bit bigger.
Pretty much the first complete sentence of page 3 of your report, you note that Mr. Eldridge has no history of special education involvement; is that right?
A. That is my understanding, that it does not appear in his record.
Q. And why was that important? Was that important because if

he had had special education involvement, he would have maybe come to the attention of more psychological professionals and maybe there would be more documentation of his problems?
A. I don't think about it as important other than the fact that it's something that we document, whether someone did or didn't have special education involvement. I don't necessarily attach any particular significance to it.
Q. Okay. But as a licensed school psychologist, licensed specialized --
A. Specialist in school psychology.
Q. Specialist in school psychology. Thank you. You know what an IEP is?
A. I do.
Q. And that is something that you only get when you are in the special ed system?
A. That is true.
Q. Okay. So, you didn't notice in reading the testimony from the Atkins hearing that Mr. Eldridge actually was in the special ed radar and had an IEP; is that right?
A. I do not recall seeing that he had an IEP.
Q. Okay. And then you don't remember reading Dr. Richard Hughes' testimony, he's another LSSP, and you don't remember reading about his conversations with Ms. Lawson, who was Mr. Eldridge's special ed teacher in third grade?
A. You know, I actually do remember reading that early on. I

don't remember the length of the IEP, but I don't remember the specifics of that, but I do recall the testimony.
Q. Okay. Do you recall that Mr. Eldridge had an IEP for an auditory processing disorder and a speech problem?
A. I recall the speech problem. I don't recall the auditory thing certainly as we sit here today.
Q. Sure. Well, if I told you that that testimony happened on June 27th, 2007, at pages 669 to 670, you wouldn't disagree with me?
A. I would assume you're representing that correctly.
Q. Okay. So, if that's all true, then we know that from an early age specialists, mental health professionals were actually paying attention to Mr. Eldridge?
A. Well, respectfully, we do not.
Q. So, at least we know that his school's special ed program was paying attention?
A. Respectfully, we do not.
Q. Okay. So, we can assume that he was in the special ed program and nobody was paying any attention to him at all?
A. We can't assume it either. We can simply assume that he was receiving special education services based on an IEP.
Q. Okay. There's no mention in any records prior to his arrest, say, his prior incarceration for the attempted murder or his prior incarceration for child abuse, there's no mention of him having any hallucinations or delusions in those prison

incarcerations?
A. I'm not aware of anything in those records.
Q. Okay. So, basically the first time -- and I think you already said this, the first time that there's documentation of Mr. Eldridge complaining about hallucinations occurred shortly after he is arrested for the capital murder?
A. I believe it was the day following the murder.
Q. Okay. And you kind of loosely refer to that time period in your first report as early competency concerns, but really those were his first attempts to malinger psychosis, right?
A. When I say early competency concerns, I mean the fact that a competency evaluation was conducted, was ordered by the Court.
Q. Okay. But you would agree with me that he was not genuinely psychotic while he was awaiting for trial; he was malingering?
A. I didn't know him then. I have no idea. I know that that is the decision the Court made.
Q. And you also know that's the decision that 17 out of 18 mental health professionals made?
A. I do.
Q. Okay. All right. You only mentioned three of those doctors in your report, your first report?
A. Yes.
Q. You mentioned Dr. Austin, Dr. Brown, and Dr. Silverman; is

that right?
A. That is correct.
Q. Okay. In your opinion, whose diagnosis was more credible or more worthy of belief?
A. The one that I thought did the most appropriate, balanced, thoughtful work was Dr. Silverman, hands down.
Q. Okay.
A. Everybody went off the same data set, such as it was.
Q. Okay. So, based on the date that you had available to you, you agree, then, with Dr. Silverman, that Mr. Eldridge was malingering psychosis while he was waiting for his capital murder trial?
A. Respectfully, I was not there to draw my own opinion. I have no fundamental reason to disagree with the conclusions that Dr. Silverman was drawing.
Q. Okay.
A. But I have no way of knowing that that is an accurate determination ultimately.
Q. Okay. Is it relevant to your consideration in this case that during the time period prior to his capital murder trial, he was malingering or presenting with the same kinds of symptoms that he's presenting now, such as his belief that Cynthia and Chirrsa are alive and well?
A. And your question was, is it what to me?
Q. Relevant.

A. All data are relevant, yes.
Q. Okay. He's also presenting the same kinds of symptoms of paranoia?
A. I believe that's generally true, yes.
Q. Auditory and visual hallucinations coming together?
A. Yes, ma'am.
Q. Hearing relatives talking to him?
A. Yes.
Q. Being at his brother's house yesterday when actually he was in jail?
A. Correct.
Q. Even though he then denies that they are hallucinations when asked? He says, "No, I don't have hallucinations, but I was at my brother's house yesterday"?
A. Yes, the statement that you made is accurately reflecting the record.
Q. And he was complaining of hearing voices?
A. Yes.
Q. In response to lots of questions, he'll say things like, "I don't know. You have to ask Barry. Barry knows"?
A. Yes, that's correct.
Q. He gets mad when he's asked to explain things?
A. Yes.
Q. Or when he's pressed for details?
A. Yes. And we're talking about back at the time of his

initial arrest and the competency phase during these evaluations.
Q. Yeah, but you're --
A. Yes.
Q. -- recognizing that those are the same things that he's saying now, right?
A. With the exception of some of those last things that you mentioned, the idea of him getting angry, I think that was much more prominent in the early record.
Q. More prominent, but it still occurs in present --
A. It has occasionally, yes.
Q. Uh-huh. Like it occurred when he was being evaluated by Dr. Moeller, when he had first raised competency for execution in the state courts, November of 2009?
A. Yes.
Q. I may have misspoken. That was September of 2009.
A. But that time frame.
Q. That time frame.
A. I wouldn't have made the distinction one way or the another without the record.
Q. Okay. He also has a selective memory, right? He can remember his father, but he can't remember who his brothers are?
A. He has at least a spotty memory. Whether it's selective or not is a matter of opinion.

Q. Okay. Okay. For example, do you recall reading in Dr. Moeller's report, which, again, is the one filed in 2009, that he remembers -- he can't remember if he has brothers or sisters or what their names are?
A. Yes.
Q. And then moments later he says that he goes to work with his brother Barry?
A. I do recall seeing that, yes.
Q. Okay. You would agree that looking at inconsistencies is a very important part of determining whether a diagnosis is correct, any kind of diagnosis really?
A. I would agree with that statement, yes.
Q. Okay. Just as an example, I'm going look at Respondent's Exhibit 23, page 4, and I'm putting it up here on the Elmo. Shrink it back down a little bit.
These are clinic notes from TDCJ, and this is dated June 27th, 1994. This is the initial death row assessment.
A. Yes.
Q. And read along with me. You my might be better at reading doctor handwriting than I am. But the highlighted portion said, "Subject" -- an S with a line underneath it probably means subject, right?
A. Right.
Q. "Subject was received from Harris County for capital murder

of his 10-year-old daughter and, quote, 'the woman that was his little girl's mother,' end quote. He has -- something -- no documented or reported psychiatric history."

And then I go down to "objective." "Rational, logical, and appropriate" --

A. That's a hard one. I think that's "the," but I don't know the next word.

Q. It's something -- his mannerisms are devoid of bizarre features, does that --

A. That seems like that's a correct decipherment.

Q. Okay. His thoughts well organized and expressed. No hallucinations, a -- something delusions -- or clear delusions. Does that look like --

A. I'm not sure if that's right, but I think that's the gist of the sentence.

Q. Some religious obsessive quality. I can't understand what -- something, something likely. Will schedule WAIS-R. And then three assessment. No Axis I. Defer Axis II. And then at the bottom under recommendation and plan, under C, no something -- and that symbol means psychiatric or psychological, right?

A. Exactly, yes, it does.

Q. No psych needs indicated. I'm guessing at that.

A. Right. It's pretty scribbly but --

Q. That's pretty reasonable, right?

A. I think that's a reasonable translation of that note.
Q. Okay. So, you would agree with me that this appears to indicate that this is an assessment of Mr. Eldridge when he entered death row?
A. Well, if we're going to use my earlier word, it's at least a diagnostic interview. It may not be even an evaluation.
Q. They call it an assessment, but it's some kind of interview?
A. It is some kind of interview.
Q. And it appears to be with Mr. Eldridge, because his name is at the top?
A. Absolutely.
Q. And there's part in here where there's no quotes. So, you assume that that's a paraphrase by the person writing the document?
A. Indeed.
Q. And then there are some places that have quotes, and that logically would be something that Mr. Eldridge said?
A. Verbatim one would assume, yes.
Q. And, so, his report when he gets to death row, is that he's here because of the capital murder of his 10-year-old daughter and the woman that was his little girl's mother?
A. Uh-huh.
Q. It's kind of an unusual phrasing. It's not "my wife" or "my baby momma." It's a specific phrasing, and that's why they

put it in quotes, I would guess. So, you would agree that that's inconsistent with what Mr. Eldridge was reporting right before his capital murder trial, which is he has no idea why he's there, because, of course, Cynthia is still alive, right?
A. Well, I don't know if I would agree with that. I don't know the context of the question. It is conceivable that they were asking who was Cynthia or some such thing, and his quoted response may be related to explaining who she was.
Q. Okay.
A. I totally see your point, but I have no idea if that's an admission that he knew that it was the mother of his little girl --
Q. Okay.
A. -- nor was she his little girl.
THE COURT: We'll break in just a few minutes for lunch, as I explained yesterday, as soon as you get to a convenient stopping point.
MS. ODEN: We can stop right now, Your Honor.
THE COURT: All right.
MS. ODEN: That's fine.
THE COURT: Very good. We'll resume at 1:00 o'clock.
MS. ODEN: Yes, ma'am.
THE COURT: All right. Anything we need to take up between now and then?
MS. FERRY: Not right now, Your Honor. I will tell

the Court that Mr. Wiercioch and I had some additional representations to make about scheduling, but we can do that at the end of the day, if the Court would prefer.

THE COURT: That's fine. Do we have any additional problems for next week or the week after next beyond what we don't know about yet?

MS. FERRY: So, Mr. Wiercioch has representations about his flight. To the -- about his ability to fly here. To the extent that we're still going to begin on the 30th, I actually spoke to my husband and rearranged things and can come on the night of the 29th, to start on the morning of the 30th, but Mr. Wiercioch has his flight representations to make.

THE COURT: All right. Mr. Wiercioch?

MR. WIERCIOCH: Yes, I checked some flights yesterday, Your Honor. To arrive on the 29th, it's going to cost $626 with the check-in baggage fees, another $50, $676. We're also going to -- I'm also going to be paying another $100 to change my flight this week to get back. As the Court's aware, our organization has had a lot of financial difficulties representing Mr. Eldridge over the last two and a half years, and I would ask the Court to take that into account.

THE COURT: What is it you would like to me to do to take it into account?

MR. WIERCIOCH: To take it into account, Your Honor, I checked some flights that are later in May, May 20th, in

particular, and we can save roughly almost $200 by scheduling it later rather than in about two weeks.

THE COURT: Why don't you confer with the other side in terms of availability of the lawyers and witnesses. I'm perfectly happy to work with both sides on scheduling to serve as many purposes at possible.

MR. WIERCIOCH: Thank you.

THE COURT: All right. Thank you very much.

(Lunch recess from 11:50 a.m. to 1:00 p.m.)

THE COURT: All right. I think we're ready. Sorry for the delay. Go ahead and take the witness stand, please, Dr. Roman.

Go ahead, please.

CROSS-EXAMINATION CONTINUED

BY MS. ODEN

Q. Doctor, when we left before lunch, we were talking about how inconsistencies are something any diagnosis requires an evaluation of, I believe. One of the things you noted in your first report was that MHMRA, which is the Mental Health and Mental Retardation Affiliates, the people that do the mental health care for Harris County in the jails, did not conduct formal or objective testing of Mr. Eldridge while he was awaiting trial. Do you recall why they did not conduct such testing?

A. I do.

Q. And why did they not conduct that testing?
A. Based on my review of the records, he was not cooperative with the testing.
Q. Right. He first said that he couldn't read; is that right?
A. I believe that's correct.
Q. Then they tried to administer a test called the Bender-Gestalt. And you don't have to be able to read to do a Bender-Gestalt?
A. You do not.
Q. You basically just look at a figure and then draw it out?
A. That's correct.
Q. And, so, he did the first item just fine, right?
A. That's what I recall from the records.
Q. And then he said that he needed his glasses?
A. Yes, ma'am.
Q. And then he said he couldn't continue?
A. That's what I recall.
Q. He said you have to talk to Barry, because Barry has all of the good answers?
A. I think I recall that.
Q. Okay. They tried to administer the MMPI-2 a second time, and he again said he couldn't read?
A. Yes, ma'am.
Q. And when they tried to do it orally, the third administration, he responded to every one of the questions with

a question of his own. Do you remember that?
A. I don't specifically recall that he responded with a question of his own, but I have no reason to dispute that. He was not cooperative with the evaluation.
Q. Okay. During the intake onto death row in June 1994, he is asked a question that I wonder if you will agree with me that is leading. He is asked, if you've ever seen things that other people can't see or heard things other people can't hear. You'd agree that that's a leading question?
A. It's leading. It's common that it's asked that way, but it's leading.
Q. Sure. It kind of suggests that maybe they could answer along those lines?
A. It certainly has that possibility.
Q. Okay. And he says that he has visions of God and heaven?
A. I recall that.
Q. Now, those are not uncommon things for churchgoing people to imagine or envision in their minds?
A. I'm not sure if I would agree with that statement.
Q. Okay. Well, when we read in the DSM, it was stated as an example of a nonbizarre delusion, that many people in that culture might have, if they are religious, visions of religious things would not be considered bizarre?
A. Well, I don't believe that's what the DSM said. It talked about delusions, not about visions, which would be

hallucinations.
Q. Ah. Okay. Okay. Well, if you're having a religious vision, it's not really clear from that wording whether that's a delusion or a hallucination, is it?
A. If it's reported as a vision, I think it's very clear that it's a hallucination.
Q. Okay.
A. That's how I would understand that question and that response.
Q. Okay. All right. Well, aside from that response, that he has visions of God in heaven, we don't have anything in the records from 1994 that indicates he's having either delusions or hallucinations, do we?
A. I don't know if I can speak to the totality of the records from 1994, but I think what you said is substantively correct.
Q. Okay. Well, at least speaking to the totality of the records that you've reviewed in this case?
A. My ability to cull out exactly what was in exactly 1994, I'm not sure I could do that as I sit here, but, again, I agree with the premise that you're raising.
Q. Okay. Okay. And then there's basically nothing in the records about him experiencing delusions or hallucinations from 1994 until 2001?
A. From what I've seen -- I'm not sure if that was a question. From what I've seen, I believe that's correct. Again, as I've

testified, I don't know that I have seen all the records that exist on this case.

Q. Of course. And I certainly wouldn't pretend to ask you what is in records that you don't know about. So, any time that I'm referring to records, of course, I'm only talking about records that you personally have seen and have relied on in making your opinion in this case. Okay?

So, if we were going to make a list from 1994 to 2000, to the best of your knowledge, he's not making any outcry of symptoms; is that right?

A. Again, I'm a bit uncomfortable saying that, in the absence of having an opportunity to look through those records.

Q. Well, do you feel like you had an adequate opportunity to look through those records to prepare to testify --

A. I do.

Q. -- in this case?

A. I do.

Q. Okay.

A. You're asking about a specific set of dates. And you're asking that I recall particularly things -- particular things within the record and tag them to particular dates. And now you're taking a six -- potentially seven-year period, and I'm just trying to be careful and correct in my answer.

Q. Well, would it be fair to say that nothing jumps out to your mind as important in terms of your diagnosis and your

opinion in this case for that time period?
A. With the exception that during the competency -- the pretrial competency hearings, there were a number of things in the record that talked about hallucinatory and/or delusional phenomenon. I believe those are all in 1994.
Q. Let's be specific. I'm obviously not meaning that. Post-death row entry, 1994, through the end of 2000, don't you find it significant that there are no outcries of symptoms during that time period?
A. Again, I don't know that I have seen all those records. I don't know if other records exist or why there might not be other records. But, indeed, if that were accurate, that over seven years there were no outcries, that would be significant that indeed there were no records or reports.
Q. So, let's talk about 2001. In 2001 he starts having some complaints, and he's briefly admitted to Jester IV because he's presenting as psychotic with multiple personality disorder; is that right?
A. You removed your dates. I'm sorry. You're talking about 2004, is that what I'm understanding, or 2001?
Q. 2001. There's really nothing on this sheet here.
A. Yes, that's correct.
Q. Okay. And there is an exhibit in Petitioner's Exhibit 6 -- I'm sorry, Petitioner's Exhibit -- this is Exhibit 10, page 6, there's a table summarizing, it says, "TDCJ records relevant to

food delusions."

And I don't know why this is suddenly so blurry. I must have -- I don't know where the auto focus is.

MS. ODEN: May I approach, Your Honor?

THE COURT: You may.

BY MS. ODEN

Q. This is Petitioner's Exhibit 10, page 6.

A. Yes.

Q. And this is a chart that talks about the weights, the date the weight was taken and where within Exhibit 6 one can find that?

A. I've seen that.

Q. Okay. And did you prepare this chart?

A. I did not.

Q. Are you familiar with the data that goes into this?

A. I'm familiar with the data. I don't know if I have looked at every piece of data or I've identified every one of those numbers personally in the record, but, yes, I believe that that is culled out of the records and is an accurate appraisal of what's in those records.

Q. Okay. I would like to talk a little bit about some of the date ranges that are in this and some things that happened during those dates, if we could.

A. Certainly.

Q. Right here in between the second line, which talks about

March 26th, 2001, the next line is October 19th, 2001. That's a pretty big time span. And his weight goes down from 233 to 178.

A. Yes, ma'am.

Q. And, so, I would like to talk about what happens during that time frame from, more or less, April to October of 2001. I am now looking at Respondent's Exhibit 24, at page 104. These are clinic notes, and it's dated 4-29-01. It says "S" -- I assume that's subject?

A. Yes.

Q. "Security reports offender has refused nine meals. Offender states he is on a hunger strike due to problems with SSI and security."

Do you know what SSI stands for?

A. I assume that's within the prison context. I --

Q. Or roughly what it means?

A. I'm not sure that I do.

Q. Okay. So, when you -- did you read this document when you were reviewing?

A. I suspect that I did. Again, there were so many documents.

Q. Sure. You think you probably did?

A. I think I probably did.

Q. So, how did you interpret SSI? Did you do anything, like call the attorneys or call the prison or do --

A. Well, candidly, as I went through the record, of course,

there are a bunch of acronyms that are used, as you know. In different populations and settings, we use different acronyms. And as I went through, if there was an acronym that I didn't know, I had a tendency to segregate it or it would often become clear from the record what it meant. Candidly, as you pull it out and I sit here and you give me that acronym, of course, I think about SSI, meaning social security income as in disability benefits --

Q. Right.

A. -- which I suspect is not at all what it means within this context.

Q. Well, and that's why I said not necessarily what it stands for, but what it means. In this context do you kind of know what an SSI is, without guessing, with just, you know, what did you interpret it as you were forming your opinion based on this document?

A. Well, here's the problem: I need context. And as I'm looking at what you just read, SSI and security, I'm having trouble with the stuff that has pink over it. So, I'm having trouble just seeing the context. If you wouldn't mind reading it again, I'll be happy to respond.

Q. I believe that it says, "Offender states he is on a hunger strike due to problems with SSI and security. OA and OS three" -- so I assume that means alert oriented times three?

A. Right. Right.

Q. "Ambulatory with steady gait, temperature 98."
A. Right.
Q. "Heart rate 66, respiration 20" --
A. Yes.
Q. -- "blood pressure" -- all the -- you know, the vitals. So, does that help you?
A. So, I take it to mean that he's having problems with the people that are in a position of authority within the prison.
Q. Ah, okay. So, it notes that his weight is 221, over here. You may not be able to read it. It's a little fuzzy.
A. I see that.
Q. "P encouraged offender" -- that might be "psychologist" or whatever -- "encouraged offender to talk with security to resolve issues. Encouraged fluid intake and consumption of commissary items in cell."
A. Well, in this case I think that "P" is probably "plan." I think this may be what's called a "SOAP note."
Q. Okay. Which makes sense, because we have S and O?
A. Right. Subjective, objective, assessment, and plan.
Q. There you go. Okay. So, that's the plan, what they encourage the person to do, to drink fluids, talk out your issues with security, and eat the commissary items you have in your cell.

April 30th, the record indicates, "11:55, checked with Sergeant Hutto, who verified offender ate lunch, last meal

noon on the 29th. So far has missed six meals."

I don't know what "will FU" means.

A. Will follow-up.

Q. Follow-up, there we go. And then at the bottom here, "May 1st, 2011, 11:30, ate breakfast this morning."

So, we at least know that towards the latter part of April and the beginning of May, he weighs 221 pounds, he says he's on a hunger strike because of problems with what you interpret to be people in a position of authority, and they checked, he ate lunch and he ate breakfast. So, even though he says he's having problems, he is eating some of his meals, right?

A. It certainly says that, and I would presume he's eating some of his meals.

Q. Right. So, now we move to June 26th, 2001. And the document that I'm looking at is Respondent's Exhibit 24, at page 105. These are clinic notes, again, from TDCJ. It's another SOAP note. Thank God it's typed.

"O: Patient is requesting HIV test. Patient gives history of unprotected sex with multiple partners, use of IV drugs. A: Requesting HIV testing to alleviate fears due to current unknown HIV status."

So, he's continuing to interact in a goal directed, logical normal way, pursuing medical care or testing through the prison system on June 26th; is that right?

A. I don't know, ma'am.
Q. But that's what it -- that's what this document seems to reflect?
A. I'm not sure it does.
Q. Okay. So, maybe that person wasn't accurately recording what was going on?
A. That's not what I'm saying. He's been in prison some eight years. He's talking about multiple sexual partners. I don't know if he thinks this is when he travels back outside of the prison or if he's talking about a prior history. I have no reference as to what that -- I don't know if he's had sex with multiple partners. I don't know if he's talking about something prior to 1993. I don't know if that's accurate interfacing or if that's an indication of a manifestation of his delusional system. I have no clue.
Q. But he doesn't -- to your knowledge, in 2001, he is not talking about leaving the prison. Right here all we know is that he's asking for HIV testing?
A. Yes. That's all we know, yes.
Q. Okay. Now I'm looking at Respondent's Exhibit 23, page 57. These are more clinic notes, dated July 9th, 2001. The portion that I'm reading is towards the bottom. "No thought disorder or psychosis noted or reported. A V 7109."
Does that "A" refer to axis?
A. I don't know what the A refers to. That obviously is a V

code, which means no diagnosis.
Q. No diagnosis. Okay. The P, the plan, is see PRN. So, see him as needed?
A. Correct.
Q. And this was written by someone that looks like MSSP. Do you know what an MSSP is?
A. I don't. I imagine that that is a master's level psychologist, but that is not a designation that I'm familiar with within my profession.
Q. Okay.
A. It may be a title within the prison system.
Q. Okay. So, we look a little further down the page to August 28th, 2001, security referral. And the part that I'm reading and it's highlighted, "It was reported that patient might be throwed off. Patient indicated he is having some stress on his pod but is thus far handling it effectively."
The part that's not highlighted, looks like, patient -- something -- reflects a euthymic mood and congruent affect. He denies SIHI. That refers to suicidal ideation and homicidal ideation?
A. That's correct.
Q. Okay. And is oriented. A: No diagnosis, V 7109. Plan: See patient privately.
And this one's typed. This is from a master's level staff psychotherapist, right?

A. Right, LCDC.
Q. And what does LCDC stand for?
A. Licensed chemical dependency counselor.
Q. Okay. Now I'm looking at -- what exhibit is this? This is from Respondent's Exhibit 23, page 11. And I guess I should go back to the chart really quickly, because that pretty much takes us up to October 2001, which was that time gap that we had originally talked about.
A. Well, if I may, as you saw within the last note, a difficulty with the records, there is a substantial gap even on that one piece of paper between one note and the next note. Weeks go by. So, when you say takes us up to, that may be true in terms of the available records indeed.
Q. Well, you also noticed when you were going through the records, that there were notes that were on clinic notepaper and then there were notes in the computer system. There were notes from the medical people. There were notes from cell side visits. There were notes from other mental health professionals. And different exhibits represent different types of records.
A. Indeed.
Q. And, so, that doesn't mean that that one piece of paper was the entirety of the record from August to October, does it?
A. I agree that it certainly was likely not the entire record.
Q. And to keep us from being here for many, many days, we're

not going to put every single piece of paper that covers those date spans. We're just going to try to keep this --
A. Of course. You simply said that brings us up to --
Q. Right.
A. -- and I just wasn't sure if I agree with that premise, that it has brought us up to or not.
Q. Okay. Fair enough. So, the next big gap that I would like to address, it's not really a big gap, but there's a little time lag between October and December. And I'm not going to go through every single gap on here. But this two-month gap, he loses about 13 pounds. So, October 19th, 2001, is when he was admitted to Jester; is that right? Does that sound right to you?
A. I would have to check the date, but it sounds right, yes.
Q. Okay. So, the --
A. Yes.
Q. -- document that I want to look at next is Respondent's Exhibit 23, page 11. And that's up here on the screen. These are another form of notes, integrated progress notes at Jester IV. This is dated October 24th, 2011. And it notes that he's 180 pounds?
A. I'm sorry, 2001.
Q. Thank you. 2001.
A. You're welcome.
Q. 2001. And it notes that he's 180 pounds. He's

complaining, "I have poison in me. Some people put some poison in me, but they don't believe me at the unit."

He's asked if he has any chronic illnesses or past injuries, and he talks about injury and surgical repair to the left knee, dislocated right fifth finger, PIP joint, KU fixation. I'm sure that's some kind of arthroscopic thing that we don't need to get into. But he has this discussion.

He's oriented at time, place, and he's oriented by nurse. Do we have any idea what that means? Does that maybe mean that the nurse had to tell him, you're in Jester IV?

A. It might. It might mean that he understands that he's at the nurse. It could mean a number of things.

Q. Okay. He's alert, happy, and depressed. He denies having hallucinations and he denies having delusions; is that right?

A. I see that, yes.

Q. Okay. All right. So, we also know by looking at Respondent's Exhibit 23, page -- oh, I don't even know if I have that up here. Well, if we were going to put every single page of the records up here, which we won't, we would see that there are many events that happen and see that his weight is measured pretty carefully over this time and that he continues to be interviewed by the psychological staff. Would you agree with that?

A. Well, respectfully, I don't know if I can agree with that without seeing the records.

Q. Okay. Well --
A. But I have no reason to believe that you're telling me an untruth.
Q. Okay. Well, let's be precise then. We're looking at Respondent's Exhibit 23, page 13, October 31st, more integrated progress notes here. And I'm looking at the notes that were taken at 3:00 in the afternoon. Seen for psychosocial eval. Subject, quote, "I can't see. My head hurts bad. I know they're going to attack," end quote. Says COs at unit of assignation, I assume, "UOA," that's his original unit, took his mail, threw urine at him, and put poison in his food. Quote, "Then Eldridge woke up. All the weight fell on him. I need to go back to Terrell. It's time for Michael to take over. He protects Eldridge," end quote.

Next quote, "I'm Gerald. I protect Eldridge. I have to go back and stop inmates from hurting his family. I got to kill them," end quote.

Says he threw out his food. Complains of getting less sleep. Hallucination --
A. Headaches.
Q. I'm sorry?
A. Headaches. "HA" is headaches.
Q. Headaches all the time. Says where he talks about we, quote, "we," end quote, he means himself, Gerald, Barry, Eldridge, and Michael.

So, continued -- and I'm sorry I don't have the next page.

So, October 31st, there at Jester, these are some of the complaints that he's making?

A. Yes, I see that.

Q. Okay. And did you consider these records? Does this look familiar to you?

A. You know, I have seen that reference before in some of the earlier records. That coming up again in 2001 -- and, again, it's often hard to tag retrospectively where these things came from. I don't recall having seen that same multiple personality thing on this particular document. But I certainly have seen that wording in that complaint --

Q. Okay.

A. -- perhaps from that very record.

Q. So, I'm intrigued. When you are doing a forensic analysis of basically not only Mr. Eldridge as a person that you talk to but also looking at all these records over this huge length of time, isn't it important to your diagnosis to pay attention to when symptoms come up and how often and what context?

A. It is. And nearly two years ago when I prepared my report, that was something very much in the forefront of my mind.

Q. Did you, like, make charts to keep track of when symptoms came up and when he complained about poisoning and what his weight was? How did you -- you did something to correlate all

this information, right?
A. Sure.
Q. It's just that you don't have those notes with you?
A. Well, I think as you'll see within my report -- you have all of my notes. So, if there is another note that exists, you would have it. It would be in the record. But as I think you can see on my page 5 of the report, for example, I have listed that in a tabular format --
Q. Sure.
A. -- which is typically how I will do this. I will keep track of it on the computer or in some fashion. But right now you're presenting me with documents and you're asking me, as you show each one, if I've seen it, and I'm trying to give you an honest answer. You've asked if I know that particular sheet of paper, and I'm trying to give you as honest answer as I can about that. I don't know what else to do other than that.
Q. Did you think it was suspicious -- did you think it seemed unusual, the array of symptoms and the description of his delusions that he's giving in this?
A. This one, absolutely so, yes.
Q. Why?
A. Because it's bizarre. It's crazy stuff. This is not how people present.
Q. Okay. I know that "bizarre" is a term of art when we talk about psychotic disorders.

A. It can be, yes.
Q. So --
A. It's bizarre even for psychosis.
Q. Okay. So, when you say it's bizarre, you don't mean that it's bizarre according to the DSM. You mean it's what?
A. This is crazy stuff that is not consistent with the way that mentally ill people present.
Q. Okay. So, does this raise a red flag of malingering for you?
A. This particular incident would certainly raise a red flag and if one were to categorize confirming and disconfirming evidence in terms of malingering, this would certainly go into the, boy, this has got to be a malingering event type of column, absolutely.
Q. Okay. Do you reference this event, these comments, this complaint in your report?
A. Obviously if I reread my report, I would be in a much better position to say whether I did that or not. You're asking me to do that off memory. But this is consistent with the idea that he had alleged that there was a multiple personality disorder from earlier in the record, which didn't seem like a credible allegation. I don't believe that I have referenced this particular note connected to 2001 in the record -- in my report.
Q. If you didn't reference it in your report, does that mean

that you didn't take it into consideration as you were deciding whether or not he was actively psychotic in the October 31st, 2001, time frame?

A. There are many old records that have significance in understanding his history and his overall pathology in making those determinations. This is something that would merit a greater degree of consideration if it were more contemporaneous with the time of the evaluation. So, is it something that I was aware of? Yes, I knew about these symptoms. Did I think that these kinds of things made sense or were consistent with pathology? No, I did not.

Q. Well, I guess what I'm not understanding is Plaintiff's Exhibit 10, page 6, is a table of hard data, his weight, which supposedly is falling because he is supposedly suffering this delusion that he's being poisoned. So, at what point do we look at this table and say this data going backwards is too remote in time; he was probably malingering; we're not going look at it; it's not relevant to considerations for right now?

A. As you presented earlier in some of your questioning, the way that I attempted to conceptualize the question I was being asked to answer, each of those components has relevance and that first part about whether he shows evidence of a psychotic disorder, even old stuff would have merit and be of some relevance. Obviously whether he has it in the here and now is more directly relevant. So, all of the records are relevant.

Q. Okay.
A. But would I think that it is a tremendously significant omission, that I was aware of it but might not have specifically made reference to it? I do not. As you yourself have said, for us to go through every document and indicate everything that was in the record would be a truly laborious task.
Q. So, right now I'm not talking about whether or not you mentioned the document that was Respondent's Exhibit 23, page 13 in your report.
A. Yes.
Q. What I'm talking about is, I asked you, well, this looks like he's malingering, so maybe he wasn't really psychotic in 2001 when he was allegedly losing weight because he's being poisoned. And you said, "But that's too remote." So, which is it?
A. I believe we've gotten off task here a little bit. Because I thought that you were asking specifically about me referencing the content of that note, as you were taking issue with why I didn't make reference to it. You then later tagged it to the fact that it is contemporaneous with the period during which he had what has been referred to as a delusional -- a delusion about food and poisoning. So, I think somehow we have crossed two questions here.
Q. Was he delusional on October 31st, 2001, looking at the

data in this note?
A. If I look at this note, this is not consistent with delusions.
Q. Okay.
A. That does not necessarily mean that he was not delusional on October 31st. But what is depicted here is not consistent with a delusion.
Q. Is it consistent with malingering or feigning?
A. It could potentially be.
Q. So, when we look at the chart on page 6, when it talks about his weight falling, we have questions at least as far as if we can talk about weight changing on one day, which I know we can't, but at least we have questions about the data affiliated around that time period, don't we?
A. I'm not sure how you mean that, about having questions.
Q. Okay. I'm looking at Respondent's Exhibit 48, page 52. These are more progress notes on Mr. Eldridge in Jester IV. The date that I'm looking at is at the bottom of the page, November 1st, 2001. He's complaining of a headache. No auditory or visual hallucinations. Speech normal and goal directed. No Axis I diagnosis.
A. Yes, I see that.
Q. So, at least from this document we know on November 1st, 2001, he was not psychotic to that person at that time?
A. Okay. I will give you that, yes.

Q. Yes. Because he might have been psychotic later on that day or earlier that day to somebody else?
A. Well, and I have a notation that one week before, he was diagnosed with a psychotic disorder within the prison records, so.
Q. Right. So, maybe he was psychotic to somebody else at another time, but he certainly wasn't psychotic to that person at that time?
A. Or that person wasn't paying attention to the existing record.
Q. Or that person wasn't paying attention to the record. They were only paying attention to the person that was in front of them at that time and were only documenting what they saw in that person, right?
A. Understandable, yes.
Q. So, now I'm looking at Respondent's Exhibit 23, page 51, more clinic notes, November 9th, 2001. Seen on -- something -- rounds. "S" would be again the subject, right?
A. Subjective.
Q. No problems or complaints. That's "complaints of," but that's probably an abbreviation for complaints reported, correct?
A. Right. Exactly.
Q. Denies suicidal ideation intent. Contract safety. Alert and oriented times three. Cooperative. Speech clear,

relevant, coherent. "NAD," you familiar with that?
A. You know, it's a term that I have seen before, but, no, it is not coming to me.
Q. Okay. "Thoughts LLGD," that would be logical, linear, goal directed?
A. Right.
Q. "No signs of mania, depression, or psychosis"?
A. Exactly.
Q. ADLs would be activities of daily living?
A. Indeed.
Q. Adequate?
A. Yes.
Q. No Axis I diagnosis?
A. That is what it says yes.
Q. November 16th, from the same person, a Ph.D. level psychologist. Denies psychiatric problems or complaints at present. Contract safety. Alert and oriented times three. Cooperative. Speech clear, relevant, coherent. Thoughts logical, linear, goal directed. NAD. No signs of mania, psychosis or depression.
Basically the same thing one week later?
A. Yes.
Q. Okay. Now, I'm looking at the same exhibit, Respondent's Exhibit 23, page 50, November 27th. If I represented to you that this was another similar entry, maybe he's making

complaints, a similar story as recorded in chart of officers poisoning his food and other inmates out to get him. He also spoke of "we" as if we were more than one person. Patients -- something -- reflects a euthymic mood with congruent affect. Denies suicidal ideation and homicidal intent, is oriented. He appears to be feigning MI -- metal illness?

A. Probably so.

Q. -- for secondary gain. No DX, no diagnosis V 7109.

Does that sound familiar?

A. That has certainly been the theme that has appeared in a number of these notes.

Q. Right. December 3rd, he was seen in Jester IV on 10-19-01 and received back 11-27-01 due to not eating and claiming audiovisual hallucinations. Complains today that the SSIs are messing with my food. He went into a long drawn-out explanation over it, that it's -- how it's been going on a long time.

He said he gets upset with security when they try to say that I ate and I didn't. I ask them if they write down that I VR, verbally refused, and they say, no, you ate. He was quite adamant about wanting someone to write it down -- and I'm turning to the next side of the page, page 49 -- but that he didn't eat. He also is accused -- sorry. He also is accused of showing -- of sharing food and getting food from other inmates, and he claims it's not true.

Chart review shows he was claiming a split personality of four different people at Jester IV for secondary gain. He mentioned none of this here today and contrary to the Jester IV and IC notes -- maybe institutional clinic. I don't know. Do you know what that is?

A. I'm not even sure if it's an "I." It's hard to tell.

Q. Okay. Contrary to the Jester IV and something notes --

A. Right.

Q. -- he said he did well there and they listened to me and helped me a lot.

Then I go down a little bit: Subject went into great detail of how he determines if his food has been tampered with, but it again appears to be for secondary gain. Due to weight loss will need an eval by Dr. Anderson. O -- what does "O" stand for again?

A. Well, again, "S" may be subjective or statement. "O" is typically objective. So, it has to do with what they've actually seen is the way that's typically goes.

Q. Okay. "Agitated over security messing with food. Delusional content noted, but secondary gain issues noted, also. Alert -- sorry. Oriented times three. Denied SIHI. Appears stable at present. Due to not eating and losing weight adds credibility to possible delusions, but it could be a well-rehearsed dialogue, too. The plan" -- oh, I'm sorry. A is no diagnosis. "Rule out" --

A. Delusional disorder.
Q. -- "delusional disorder. Plan: Further client review shows J4, Jester IV, addressed the weight loss concern by noting subject tells some staff that he is losing weight, then telling other staff he is still" -- and now we're looking at the next page, page 48 -- "he is still hungry and wants more food to eat."

This is from Mr. Hindman, a master's level psychotherapist. Do you remember reading that?
A. I remember this note well.
Q. Okay.
A. Quite vividly.
Q. Okay. December 20th, 2001, this is the follow-up. "He continues to maintain that security is messing with his food. Patient's MS" --
A. Mental status.
Q. I'm sorry.
A. Mental status.
Q. -- "mental status, reflects a paranoid mood with congruent affect. Denies SIHI. Is oriented times three. He does not appear weak and shows no symptoms of mental illness with the exception of paranoia over food issues, which may be for secondary gain."

December 31, a referral from nursing about talking about FBI, et cetera. "When patient was seen on death

row, he continued to report that COs are putting poison in his food. Because he knows some things" -- flipping the page -- "about security and has reported some of these things; therefore, security is trying to harm him."

Sorry, I have it too high up.

A. No, it's okay. It was only one line.

Q. Okay. "Trying to harm him by putting poison in all his food. He claims he is eating food that other offenders give him that come from the commissary. He stated that he is not going to eat TDC food.

"He denied complaints of audio or visual hallucinations. This patient was seen on 12-20-01 by a psych therapist and questions of secondary gain were raised. Denies SIHI. Alert" -- it looks like "awake." "Alert, O times four. Good eye contact noted. No diagnosis, V 7109."

You remember all of this, I assume?

A. Yes, I do.

Q. Okay. So, when we're looking again at the Plaintiff's Exhibit 10, page 6, we see that a lot of these notes, these dates in December, with his weight going down, appear to correlate to a time when he was sharing food with other inmates, eating the food that they gave him, eating commissary food, and saying he just wasn't going to eat TDC food; is that right?

A. Well, it corresponds to a time where the record makes

reference that some of these things were noted. I don't know how carefully it was tracked. I don't know how accurate that was. I don't know if those were third-hand reports. But, indeed, you have accurately related that some of that language occurs in the notes.

Q. And some of the psychologists and psychotherapists who were taken those notes were noting, if you would agree with me, a lack of disorganized thought process. We never see a comment about a flat affect? And I'm sorry, when you nod, she can't write that down, so.

A. Well, you hadn't asked the question yet. I was simply being polite and agreeing with the fact that I'm processing what you said.

Q. So, would you agree with me that those records do not show any notes about disorganized thought process?

A. I would agree that within these notes, they do not reflect that these individuals thought that he had a disorganized thought process or any other type of aberrant behavior, short of what they have described as delusions, paranoia, and suspiciousness.

Q. Uh-huh. So, what we have in those particular records is Mr. Eldridge outwardly saying that he's have these delusions and he's outwardly reporting that he has these thoughts, but his visible demeanor does not appear to be a flat affect, avolitional schizophrenic presentation, does it?

A. Well, here's where we get into difficulty again. The first part of that, I totally agree with. Indeed, it does not appear to be avolitional. He is not showing alogia. He is not showing disorganized behavior or necessarily disorganized thought processes. Although, frankly, that very bizarre note that you had of the multiple personality disorder that I remember, but not necessarily in that particular page, is certainly an example of disorganized speech. Do I find it suspicious? Of course, I do, but it is certainly an example of disorganized speech, whether it's legitimate or not.

Q. Let me explore that concept a little more. So, you sounded pretty vehement when you said, of course, you're suspicious?

A. Right.

Q. But it sounded like disorganized or illogical thought?

A. The data are, and we need to interpret the data.

Q. Well, wait a minute. Let me separate this. The data that we have is the words that he used --

A. Yes.

Q. -- or at least as they were recorded?

A. Absolutely.

Q. And the impressions by the clinical therapist?

A. Yes.

Q. And the data that they recorded, they didn't record that they thought it was disorganized or illogical?

A. Of course, they did not.

Q. That's your interpretation?
A. I wasn't saying that was my interpretation either. Objectively you made the comment about this being not consistent with schizophrenia. If one were to assume that he is schizophrenic -- because we can't read minds, as you pointed out, if one were to assume, which is not an assumption I'm necessarily making in this case, that were consistent with a legitimate presentation, it is on the face of it an example of disorganized speech. If you say to me is that typically what disorganized speech looks like? No. The content is troubling. The process is consistent with a great degree of confusion and disorganization. The content about all of these different people and different names is very suspicious.
Q. Originally what you said was that it was suspicious of malingering?
A. Yes, and I hold to that.
Q. Okay. So, you're not saying it's now also suspicious of schizophrenia?
A. I'm not.
Q. Okay. I just wanted to make sure I understood that.
A. You were making the point that as we reviewed these records, that we are seeing no evidence of disorganized thought or behavior or schizophrenia, and I was pointing out that there is evidence of potential delusions, which is potentially consistent with schizophrenia and that that one note talks

about what is clearly disorganized patterns of speech. I am not saying that I believe that it is consistent with what we normally see in schizophrenia. There's no question that it is disorganized speech. It may be concocted, it may be real, but the speech patterns are indisputably disorganized and incoherent.

Q. So, you would agree with me, then, that someone who is potentially malingering psychosis can concoct disorganized speech?

A. Of course they can.

Q. Of course. Well, so, I think we've talked a little bit about what goes on in 2001. Again, he was admitted. He presents as psychotic. He says he has multiple personality disorder. And we know that they didn't buy that at Jester IV, and he was dismissed as flagrantly presenting feigned symptoms, right?

A. I agree with all of that except for the fact that I have never been of the opinion that he is attempting to present multiple personality disorder.

Q. So, you don't think that that record we just read represents an attempt by Mr. Eldridge to present as a multiple personality?

A. I have no idea whether that's what it means or not. In fact, there's already been prior testimony in this court indicating the fact that there aren't sufficient features that

would draw that kind of a conclusion. If it was malingered, I have no idea what his intention was.

Q. Right. We can't go inside his head and get into what his intention is. All we can do is look at his words, right?

A. Right. And if it was legitimate, it is much more consistent with the pattern of disorganized speech than it is with what you see in multiple personality disorder. That is not what dissociative identity disorder presents like.

THE COURT: I think her point is not that that was multiple disorder. It was an attempt to portray it.

THE WITNESS: Right. And obviously I can't know what his intent was.

BY MS. FERRY

Q. Right.

A. Yes.

Q. Would you agree that the most simple understanding is that he was saying, I'm a multiple personality and he clearly wasn't, therefore, he was malingering a multiple personality disorder, or do you think there is a simpler explanation?

A. If we take the premise that that was clearly an intended feigned malingered presentation, then, yes, indeed, it would appear that the person was attempting to present having multiple personalities. But you're asking me to draw a conclusion about a single instance in the record that you brought up in a particular context. We came into this in the

context of looking at this weight loss and the predicate of this --
Q. Okay. If somebody came into your private practice one day and says those kinds of things to you, you would be forced to, if not conduct an assessment, at least to evaluate what they were doing?
A. Yes.
Q. And, so, absent all this other, you know, hundreds of pages of records --
A. Yes.
Q. -- you would be able to evaluate that event and come up with a conclusion, I think that the person may be malingering, correct?
A. Yes.
Q. Okay.
A. But my suspicion would be a thought disorder, rather than dissociative identity disorder.
Q. Well, your suspicions of the actual diagnosis is one thing, but you would consider that he was malingering?
A. Yes, absolutely.
Q. Absolutely. In 2002, would you agree with me that he made four complaints about being poisoned, or do you know?
A. I don't know. We have a long period of time where I saw no records, and I've asked about this. It was 2006 to 2009. Offhand, I don't know.

Q. Okay.
A. I mean, I have no reason to believe you would misrepresent that obviously, but directly, I don't know.
Q. Well, if I just quickly discussed it so we don't have to go through hundreds of pages --
A. Yes.
Q. -- if I told you that on January 17th, 2002, he wrote a letter complaining about a conspiracy to poison him, would that sound --
A. Yes.
Q. -- approximately right?
A. Yes, I recall seeing such document.
Q. And if we were going to be turning to the records, we would know that that's at Respondent's Exhibit 7, page 14 to 24, but we're not going through all that.
A. Yes. Thank you.
Q. Would you agree with me maybe that January 26th, 2002, he complains again about poisoning, and that would be in Respondent's Exhibit 24, page 134?
A. Again, I have no reason to disagree with that.
Q. Okay. January 28th, 2002, he filed a grievance saying that the inmates are out to get him. He said he's flushing the food in the toilet to avoid poison by the officers and the gang members that were in on the conspiracy. And he says that he's eating commissary food. That would be in Respondent's Exhibit

7, page 6 through 9. Does that sound about right?
A. Again, I wouldn't know about the dates or the particular exhibits, but, yes, I remember all of that verbiage in those records.
Q. Okay. March 29th, 2002, he makes some more poisoning complaints which result in two inmates being moved to another pod.
A. I recall that as well.
Q. Okay. That would be Respondent's Exhibit 7, page 30 to 31.
Then we go to April 3rd, 2002, that would be Respondent's Exhibit 24, page 134. The unit psychotherapist said that there's no symptoms presented and to monitor him on an as-needed basis. Does that sound right?
A. I mean, obviously there are many records that say that. I couldn't cull that one out specifically, but I'm sure you're presenting it accurately.
Q. Okay. May 2nd, 2002, he's not given an Axis I or Axis II diagnosis on his regular mental health assessment? Do you remember that he wasn't?
A. I have no idea about what happened on a particular date.
Q. Okay.
A. But, again, I suspect that you're saying that correctly.
Q. Okay. Well, that would be something you would take into account as you were forming your opinion looking at the records?

A. Of course I would.
Q. If a psychotherapist or psychologist had seen him and decided on that date that he didn't merit an Axis I diagnosis, that would mean that on that date in that person's opinion he was not schizophrenic?
A. Yes, that is exactly what that would mean.
Q. Okay. And that would be Respondent's 23 at page 58. Same thing, basically, July,29th, 2002, no Axis I, no Axis II diagnosis, Respondent's 23, page 59.

So, unless you want to correct me because you are thinking of some other date or some other event in 2002, in 2002 we have four complaints in that year that he's being poisoned and we have no notations of the negative symptoms that we've talked about, such as flat affect, avolition, alogia, et cetera. Would you agree with that?
A. Again, you're asking me to make a specific statement about essentially an entire year's worth of records.
Q. Well, I am asking you because you are coming to this Court and saying that you believe he suffers from schizophrenia and one of the reasons that he is said to suffer from schizophrenia is that he has a delusion that he's being poisoned. And one of the exhibits that is attached to this case shows a chart of dates from 2001 to 2011 that the purports to recount his weight loss which is said to fluctuate with his belief that he's being poisoned.

So, as you evaluate that hypothesis, that conclusion for whether or not it's true, surely you're ready to say whether or not in 2002 he ever complained to anybody about -- not that he would complain about negative symptoms, but he ever presented any negative symptoms of schizophrenia?

A. Well, here's the issue with which I struggle. My report, as we've established is thorough and complete, and I stand by it. To the extent that you want to pull up documents and say here is a document that we believe suggests something different than what your report says, I'm happy to look at that and make a statement about that, absolutely. When you ask me in a global way to recall whether any particular year or any particular date that something did or did not occur, records that are voluminous, that's a very difficult thing for me to give the truth, the whole truth, and nothing but the truth about. So, I am happy to look at any document that you present and speak to it within the context of anything that you think is inconsistent. If it's in my report, sure, let's go to that section and I'm happy to speak to that as well.

Q. Okay. Do you ever write down in your report any negative symptoms that were noted for Mr. Eldridge in the year 2002?

A. I'm sorry. And when you say "negative symptoms," we're talking of schizophrenia?

Q. Yes, negative symptoms of schizophrenia.

A. I can look at my report and answer that question.

Q. Great. Thank you.
A. No, indeed, it appears that I do not list any negative symptoms of schizophrenia from records in 2002.
Q. Okay. And before we move on to 2003, I just want to check, one of the things that it says in the DSM is that we have to interpret delusions and people's beliefs and their reactions according to the culture that they come from. And you would agree with that, of course?
A. I would agree with that. The question of what constitutes the culture is the issue at hand.
Q. Right. And I didn't ask that. You would agree with me that Mr. Eldridge's feeling or belief that maybe the guards are messing with his food might have a rational origin? I mean, can you imagine if the guard is pushing, I imagine, a cart full of trays of food and he's picking up the trays and putting them in the slots in the doors, that his thumb goes in the food and Eldridge says, hypothetically speaking, "Hey, quit messing with my food." That's a rational concept, right?
A. That would be a rational observation, yes.
Q. And you can imagine, no offense to correctional officers, that maybe one of them goes (coughs), "Sorry, I coughed on your food, and you could imagine that maybe that becomes a way that they taunt him, right?
A. Those things are certainly possible, yes.
Q. Okay. To evaluate that, as you said, it would come down to

understanding what the culture was that he came from, if there was a culture, right?

A. Let's review that question. The culture is important. The context of the culture does matter, yes.

Q. Okay. And in order to interpret the data as DSM wants you to through the lens of what is appropriate for that culture, you have to know what that culture is?

A. Is that a question?

Q. Yes.

A. This is the part that is unclear and vague. In DSM-III was listed as an i.e. In DSM-IV as an -- in effect, a religious culture or belief system. In DSM-IV it comes by way of example. It is unclear to what extent they're talking about a culture as in the group in which you interact. I'm a member of Scouts. I play tennis. Those are not cultures; although, we may refer to them as such.

Q. Let's not talk about your culture. Let's talk about whatever the relevant culture is in this case. That would be the culture of Mr. Eldridge coming from death row, right?

A. I'm sorry. You asked about DSM, and that's the context in which I was responding.

Q. Okay. So, let's talk about 2003. Maybe we can hasten this along by saying, would you agree with me that, again, Mr. Eldridge reports only sporadic accounts of only the positive symptoms of schizophrenia in 2003? And if you need to

refer to your report, feel free.
A. I will agree with you that within the record, there are many fewer reports of negative symptoms of schizophrenia throughout the record. As to being specific about 2003, sure, I'll be happy to review the section again.
Q. Okay.
A. Yes, there are very few indications of specific negative symptoms of schizophrenia that are indicated within my report.
Q. And refresh my recollection, what exactly negative symptoms of schizophrenia do you report in your report for 2003?
THE COURT: For 2003 --
MS. ODEN: Yes.
THE COURT: -- or general?
MS. ODEN: 2003.
A. I have no specific references to negative symptoms of schizophrenia for 2003.
Q. Okay. So, when you said there are many fewer, you were referring to fewer than ones in the future, not --
A. I'm sorry. Compared to positive symptoms, yes.
Q. Right. There were no reports of negative symptoms for 2003?
A. There were no reports of negative symptoms from 2003 contained within my report.
Q. Okay.
A. Again, if you ask me about the totality of the record, I

don't know if I've seen all of the records for sure. I don't know if I may have missed something. But, yes, it is not something that I have culled out.

Q. Everything you thought was important for your diagnosis is in your report?

A. Yes, it is.

Q. Okay. So, 2004, same thing?

A. Same answer, yes.

Q. Same answer. Only sporadic outcries, if you'll call it that, from Mr. Eldridge, and there are only positive symptoms, right?

A. Primarily positive symptoms, yes, ma'am.

Q. You would agree with me, if I represented to you, that there were only three complaints made in 2004 by Mr. Eldridge that he was being poisoned or that someone was tampering with his food?

A. I certainly would have no reason to disagree with that representation.

Q. And you would agree with me that the records reflect a number of times one, two, three, four, five, six, at least six times in 2004 when the psychologists and psychotherapists said that he had no Axis I diagnosis?

A. I certainly would say that that is true. I couldn't give you the number, but, yes, that seems to comport with what I recall.

Q. Okay. 2005, he doesn't make any complaints of food poisoning at all in 2005?
A. You know, I don't recall offhand at what point he had begun B-12 treatment for the pernicious anemia, but certainly things changed dramatically after then.
Q. You have your report in front of you, right?
A. I do. And I'm digging for where that section is. I obviously don't want to read all of the pages. Long report. April of 2006, I have it.
Q. Okay. I'm talking about 2005.
A. Yes, I would agree with your statement. Well --
Q. So, for the whole year of 2005, if Mr. Eldridge had been exhibiting a delusion about food poisoning that was related to schizophrenia, at least in 2005 he had none of that?
A. Indeed, I see no reference that I made to anything from the records in 2005 regarding that. I agree with that.
Q. Okay. So, in 2006 we have sporadic positive reports of symptoms, if I'm correct. I believe that March 10th, 2006, was when Mr. Eldridge had his visit with Dr. Patricia Averill. Do you recall that she's the psychologist that evaluated him for the mental retardation claim?
A. Yes, I do.
Q. Okay. And you read her report?
A. I did.
Q. Okay. And she noted some unusual things in her report.

She said that he had good grooming and hygiene, that he had poor eye contact. He was slouched and turned away from the door where the guards could be walking by. He was alert and oriented times two. He didn't know what day of the week it was or what time it was. And he had a labile affect -- is that pronounced correctly --

A. That's correct.

Q. -- a labile affect. Tell us what a labile affect means.

A. It typically means that it's fluctuating and relatively inconsistent.

Q. Okay. Displaying a range of emotional, you know, crying, happy, sad, angry?

A. Typically when we say range, we talk about that being sort of more normal. When we talk about it being labile, we talk about it being more discontrolled, but, yes, indeed, it is a range of different types of emotions.

Q. At the end of the testing while she's waiting to send him back to his cell, he turns to her and says, "I can talk right now, but not when they're all yelling at me." You remember that right?

A. I do.

Q. And he said that he used to take care of Barry, his brother. And he says some other odd things about Barry. Whatever happened to him, would happen to Barry. If he burned his arm, Barry would burn his arm. And that Michael is the one

to watch out for, because Michael is really violent, right?
A. Right.
Q. Okay. In April -- in April of 2006 you mentioned he's admitted to the clinic because of the pernicious anemia. And I'm wondering if you can tell me what negative symptoms of schizophrenia you note in 2006?
A. I -- in looking at my report, I am not aware that I have any specific negative symptom tied to any particular date.
Q. Okay. And how about any negative symptoms in general in 2006?
A. Not in 2006, no. More positive symptoms, I have --
Q. Wait. Hold on one second.
A. Sorry.
Q. We're going to have to do question and answer.
A. Please.
Q. Okay. While he was in the hospital on April 20th, he gets a psych consult. That is Respondent's Exhibit 25, page 145. Do you remember looking at this psychiatry consult?
A. I do.
Q. Okay. "Patient is paranoid, says that people mess with his food. Talks about God. That he is Jesus Christ brother."

I assume that means Jesus Christ's brother.

"That he can fight the devil. Patient says that people are watching him all the time. Says he can fight devil. He did it before. Where he talks about God, devil, and people,

he cries. Tears fall down. When patient was asked about mother and father, he said that they beat him up. He couldn't do anything without their permission. And he was crying. Patient denied audio or visual hallucinations. Denies SIHI. He denies symptoms of depression. He was very focused on mini mental exam and did it well, 23/30. Appearance, cooperative. Cried when talked about God, devil, people messing with his food. Speech, normal rate and volume. Affect, depressed. Mood, okay, labile."

Do you find that there is anything suspicious about this presentation?

A. Suspicious in what sense?

Q. Suspicious of malingering?

A. Obviously the things that he reports in terms of this whole deal of the devil and Jesus Christ and so on, that's an unusual symptom presentation. So, certainly it's the kind of thing that would be a red flag for malingering.

Q. Did you note that in your report anywhere?

A. I do not believe I did.

Q. Okay. If I remember correctly, in your report you state that the fact that he had pernicious anemia is tangible medical evidence of the consequences of his delusional belief system; is that right?

A. I think I did say that.

Q. So, do you still believe, having heard all the testimony

before you from Dr. Nathan, do you still believe that pernicious anemia was caused by his delusional belief system?
A. So, we have a couple of things there. We cannot rule out that the pernicious anemia was caused by changes in his food intake. It may not be that, but it cannot be ruled out. Obviously I've made the presumption that the changes in his food intake were because of his delusions about food. Therefore, if we tie those together, then, yes, I still believe what you said.
Q. So, it's your understanding, basically, that pernicious anemia is a synonym for Vitamin B-12 deficiency?
A. It is. It is a very severe form of Vitamin B-12 deficiency.
Q. Okay. After he was discharged from the hospital, was Mr. Eldridge taking any psychotropic medications in 2006?
A. He did take risperidone briefly, as I recall. I think he had 1 milligram, if I recall. And it was discontinued shortly thereafter.
Q. So, after he was discharged from the hospital, which occurred on April 26th -- I'm sorry, April 29th, 2006, as reflected in Respondent's Exhibit 24, page 182, after he was discharged, for the rest of 2006 he was not on any psychotropic medication?
A. This is the difficulty with two reports.
Q. When you wrote your first report, did you think that was

going to be the first of more than one report, or did you intend that to be the whole opinion in the case?
A. I had no idea whether I would be seeing him again. There was discussion that I was likely to have that opportunity, but it was unclear whether it would occur or not.
Q. And, I'm sorry, I didn't mean to interrupt you. Please continue.
A. Certainly. No, what you said is correct. It appears that -- it wasn't clear to me how long that he took it, but it was short-lived. And, indeed, for the remainder of 2006, according to what I understand in the record, he was not on other psychoactive medications.
Q. And I know I've already asked you about whether there were any negative symptoms of schizophrenia reported in your report for the --
A. Right.
Q. -- whole of 2006. But I want to be very clear that after he stopped taking psychotropic medication in 2006, did he continue to make positive complaints or complain of the positive symptoms of schizophrenia?
A. In 2006?
Q. In 2006.
A. Yes, it appears that he did.
Q. Okay. And for the remainder of 2006, so we're talking about after he's been discharged from the hospital and after he

is no longer taking any psychotropic medication, in 2006 he received several psychiatric or psychological assessments or evaluations at Polunsky and he was not given any Axis I diagnoses?

A. I'm sorry, meaning that people had met with him and discussed things with him?

Q. Yes.

A. That does appear accurate, yes.

Q. Okay. If I were to represent to you that on April 23rd, 2006; June 21st, 2006; July 12th 2006; August 28th, 2006, all of those times he was actually diagnosed as not having an Axis I diagnosis, you would have no reason --

A. No, that sounds accurate.

Q. -- to disagree with me? Okay.

You said in your report that there were only 18 entries from August 26 to January 2009 -- I said August 26 --

A. August 2006.

Q. -- 2006 to January 2009, and they provided no new information; is that right?

A. That is what I said, yes.

Q. But didn't they, in fact, affirm that for that whole stretch of time, Eldridge was not viewed as having any Axis I diagnosis by anybody in that system?

A. I don't know. It wasn't clear to me if no records exist, if records were lost, if they weren't provided to me, and I had

asked about that, but I was told that those were simply records that did not exist.

Q. So, I'm actually not talking about all of the records that could possibly exist for Mr. Eldridge. I am talking about the 18 entries that you refer to in your report from August 2006 to January 2009. You said that those 18 entries provide no new information. And I'm asking you if that's true, because those 18 entries actually indicate that psychologists or psychotherapists thought he did not merit an Axis I diagnosis in that time frame.

A. I'm not sure I agree with that. Seven of them were nothing more than documenting to get his B-12 injections, and I list that the other ten were routine 90-day administrative mental health assessments and I --

Q. Those 90-day mental health assessments were actually psychologists talking to him and deciding that he didn't merit an Axis I diagnosis, weren't they?

A. In reviewing those notes, it was not clear to me how much of an investigation was done within the 90-day assessment. But, indeed, there were -- it appears ten of those over that period of time, and what you stated is correct, they did not provide positive evidence of any diagnoseable or suspected mental illness.

Q. Let's talk about 2007. In 2007 he continues to present with sporadic and positive symptoms; is that right?

A. As I've just said, I have no records between 2006 and 2009 to be able to speak to. Literally there are those 18 entries.
Q. I know that you don't and I know that the Judge doesn't want me to put up all the documents that are in the records from 2007. So, I'm just going to say this: Are you telling me that the only records you reviewed from August 2006 to January 2009 are the, quote, "18 entries" that you're referring to in your report?
A. That's exactly what I'm telling you. Those are the only records I saw during that time frame.
Q. So, would it change your mind about anything in this case if you knew that in the fall of 2006 and the winter of 2007, Eldridge occasionally presented with some positive symptoms of schizophrenia, but was never given an Axis I diagnosis?
A. I don't know if that would change my mind or not.
Q. Okay.
A. I mean --
Q. Would it change your mind if you knew that -- well, surely you know that Dr. Allen evaluated Mr. Eldridge on May 20th, 2007?
A. Yes.
Q. I'm sorry. May 9th. I lied. And you read Dr. Allen's report, correct?
A. Yes.
Q. So, it's not the case that you only had records from those

18 entries to review?
A. There were other records that existed during that period of time in terms of those evaluations, of course --
Q. Okay. So --
A. -- but within the prison records, yes.
Q. Okay. I'm talking about the records in the case --
A. Okay.
Q. -- that you base your opinion on.
A. Yes.
Q. So, May 9th, 2007, Dr. Allen notes that Eldridge can engage in goal-directed, correct, purposeful, logical, and oriented conversation? You would agree with that?
A. That that's what the report says?
Q. Yes.
A. I would agree that that's what the report says.
Q. And you don't have any reason just reading the face of the report to think that Dr. Allen is lying?
A. Of course not.
Q. Or making it up?
A. Of course not.
Q. It's a data point?
A. Yes.
Q. It's a vector to be considered, if you would?
A. Absolutely.
Q. Okay. And it's not just a random report from the guy

walking down street. It's a report from another mental health professional?

A. Indeed.

Q. Based on an examination that took some hours?

A. Absolutely.

Q. So, it's a report that you would give some credibility to?

A. Absolutely.

Q. Okay. And Dr. Allen noted that Eldridge can engage in that kind of goal-directed, logical, purposeful conversation when he wants to make a point or make sure that data that's helpful to him is considered?

A. I recall him making that point in his report, yes.

Q. And he also noted that Mr. Eldridge did not display any negative symptoms, like a flat affect or autism, et cetera?

A. Yes, I recall that.

Q. Okay. Would it change your opinion if you thought back to those mere 90-day assessments and saw that they had noted, for example, on May 22nd, 2007 -- this is Respondent's Exhibit 23, page 114 -- "Patient is neat, clean, orderly, not delusional, no hallucinations, speech clear and goal directed, insight and judgment good," and then, "no Axis I diagnosis"?

A. No, it would not change my opinion.

Q. Okay. But you did take that into account?

A. Of course.

Q. Because that's one of those 18 entries?

A. Of course.
Q. Okay. So, when we talk about those 18 entries, it's not just like scribble in the margin, no Axis I? They actually go through the checklist?
A. They do.
Q. Okay. Same thing on June 15th, 2007. And then did you find it relevant that June 25th, 2007, is when the Atkins hearing began in this court?
A. Obviously it was a big date. So, certainly it was relevant.
Q. Sure. Okay. There's a mention in Petitioner's Exhibit A, page 50, that Mr. Eldridge gets a disciplinary for having a bottle of urine in his cell because the devil is attacking him. Do you remember that?
A. I do.
Q. I don't actually have a copy of that, but do you remember looking at that?
A. I do. I don't remember the report well. I don't have a visual image of it, but, yes, I recall seeing that.
Q. Okay. Well, then we don't get into too much detail in there. But having this little discussion of what happened in 2007 with me, would you agree that in 2007 there's really only sporadic reports from Mr. Eldridge of any positive symptoms at all? It's not like on a daily or weekly basis he's having issues?

A. I don't know if I can agree with it or not, in that in some of the prior and in some of the subsequent records, he was having relatively frequent contact. And as you pointed out, many of those documented there wasn't a lot going on. There isn't as frequent a set of reports. So, I do agree that those things do not appear in the record.
Q. Okay.
A. But obviously I can't make a statement about whether that's the totality of his functioning over the course of that year.
Q. I recognize that you may wish that the record was more complete and, of course, we all do, because we would love to have more records in this case, but based on the record that we do have --
A. Yes.
Q. -- in 2007, you would agree with me, that Mr. Allen -- I'm sorry, Mr. Eldridge only made sporadic complaints of the positive symptoms of schizophrenia?
A. You change the predicate again. I would agree with you that within the record there is only sporadic evidence to suggest that there are complaints of schizophrenia. I have no idea what Mr. Eldridge did or didn't do over the totality of that year.
Q. Are you trying to distinguish between what really happened and what's reflected in the record?
A. I think you asked me a question about what really happened.

I can only speak to the record.

THE COURT: I think the question was based on the record.

A. Based on the record, I agree, yes.

Q. So, based on the record, in 2007, Mr. Eldridge only made sporadic complaints of the positive symptoms?

A. I'm sorry. I see the disconnect. I was not sure whether other records existed that were not provided to me or whether that was the totality of the record is why I was confused about that. My apologies. If, indeed, you're saying that the records I have seen represent the totality over that period of time then, yes, I agree with what you stated.

Q. Okay. And I'm not trying to be difficult. I don't know what records you've seen and I think you don't know what records you've seen. So, when I ask you about the records, I'm not trying to trick you. I'm only asking about the records you remember looking at, even though we really don't know what those were and whether you saw all the records. So, I'm just asking about what you know.

A. Yes, within the records I've examined, the statement you made is accurate, yes.

Q. So, let's talk about 2008. Would you agree with me that Mr. Eldridge made one outcry of a positive symptom of schizophrenia and no outcry of negative symptoms of schizophrenia for the whole year 2008?

A. Well, we're going to have the same issue that we had with 2007.
Q. Based on the record.
A. So, yes, I would agree with that statement.
Q. Okay.
A. It's a similar discussion to what we had for 2007.
Q. Yes. Do you think Mr. Eldridge was genuinely schizophrenic in the 1994 period before his trial, '93, '94, before his trial?
A. I can't know for sure whether he was legitimately schizophrenic, but I do agree that the record is very suspicious, that it was clear evidence of schizophrenia.
Q. You are suspicious of what?
THE COURT: Are you saying that the record suggests feigning?
THE WITNESS: That the record suggests, as the Court had decided, that the record suggested he was feigning, that there was evidence that he was engaging in dissimulation and reporting more symptoms. It's hard for me to know whether he might also have had some evidence of true schizophrenia or not.
BY MS. ODEN
Q. Of course. And let me clarify, that any time I'm asking you about your opinion, I am expecting that your opinion is based only on the data that you have and I, of course, don't expect you to imagine what other data might exist.

So, for the time period after he entered death row in 1994 through 2000, do you think Mr. Eldridge was schizophrenic?

A. Based on what I've seen, no, it is not my opinion that he was schizophrenic.

Q. Okay. How about in 2001?

A. In light of later data, no, I think it's unlikely that he had an active episode of schizophrenia in 2001.

Q. Okay. So, you're adding something in there.

A. Well, because if you look at 2001, he showed a number of symptoms, but the reality, of course, is the fact that over the course of time, I mean, those things suddenly seem to improve. So, no, I do not believe that schizophrenia was an accurate diagnosis to be assigned to him in 2001.

Q. How about 2002?

A. I would make the same statement, that it would not be a valid diagnosis.

Q. How about 2003?

A. Same statement.

Q. 2004?

A. Again, concern certainly about the delusion, and I do believe that there is reason to believe that he may have had some type of psychotic process that was occurring.

Q. Okay. Now, I can see that we're going to have to go back and start again. Any time up to and including 2000, if he was

not schizophrenic, do you think he was having some other psychotic disorder?
A. He certainly had delusions. It is conceivable that he would have had evidence of a delusional disorder.
Q. Okay. I'm asking you for your opinion. Can you diagnose him with a delusional disorder for any point in time up through and including the year 2000?
A. Based on the record, with the issues that he had during the eating episodes, yes, I believe that what he showed --
Q. What eating episodes up through the year 2000?
A. Oh, I'm sorry. I thought we were up to 2001. My apologies.
Q. I went back.
A. Okay.
Q. Up to and including the year 2000 --
A. No, I have no reason to diagnose him with any psychotic disorder or major mental illness.
Q. So, if I ask you if someone has a psychotic disorder, does that include both schizophrenia and delusional disorder?
A. Yes, it does.
Q. Is that the biggest, best umbrella term to get at the relevant mental illness in question for competency?
A. Yes, it is.
Q. Okay. So, that's how I'm going to phrase it. In 2001, do you find that he was -- would I correctly say that he was

psychotic?
A. Yes.
Q. And does that mean the same thing as being diagnosed with a delusion -- with a psychotic disorder?
A. Yes.
Q. Okay. In 2001, was Mr. Eldridge psychotic?
A. I believe he was.
Q. Okay. And you believe that because?
A. I believe that because he had prominent evidence of a delusion, that delusion -- so, with a diagnosable mental disorder. That delusion affected him in a practical way in day-to-day life.
Q. And which psychotic disorder are you diagnosing him with in 2001?
A. Based on the record and the way that things are reported and all that's been described, I think it is probably most appropriate to conclude that what he had was a delusional disorder rather than a full-blown schizophrenia.
Q. Okay. What is -- what are the diagnostic criteria for a delusional disorder?
A. The definition that you've given for a delusion is the same thing that applies to a delusional disorder. A delusional disorder -- and there are several subtypes within it, but -- and I hesitate to say among the most common, because the literature doesn't necessarily show that, but a persecutory

delusion is certainly one of the subtypes, and it involves this idea of a fixed false belief that is persistent over time and causes bona fide impairments in functioning.

Q. And you believe that despite your suspicions that he was malingering?

A. I do. Looking at the weight of the data, based on a retrospective review of what I've looked at, obviously not having had a chance to examine him, I believe it's most consistent with him showing evidence of a delusional disorder.

Q. So, let me just make sure I understand. In 2001, you do not believe that he was schizophrenic, but you do think that he was suffering from a delusional disorder?

A. Yes. Because I don't think that there is adequate evidence in the record to comfortably assign a diagnosis of schizophrenia based on the number of symptoms that are required. So, I do believe he had a psychotic disorder, but I don't think we had adequate evidence to call it schizophrenia.

Q. And I'm putting on the screen here, this is page 329 from DSM, delusional disorder.

A. Yes.

Q. (A) It requires a nonbizarre delusion of at least a month's duration?

A. Right.

Q. Where does he have a month of suspecting that his food is poisoned?

A. My understanding is that over a protracted period, he was having issues with food and was making complaints about it.
Q. A protracted period of a month? He was in Jester IV for a week, and he was kicked out for feigning.
A. Go back to the food delusion thing. As best I can tell from the record, beginning on February 22nd, 2001, complaints about someone putting meds in the food.
Q. I'm sorry, you said February --
A. 22nd of 2001.
Q. Uh-huh.
A. There's an extended period going through that period of time where this is a recurring complaint.
Q. And tell me what that period of time is. You said February 22nd, 2001. When is the next time that he complains about his food being poisoned?
A. What I have from the records, the next specific indication that I have is on June 13th of 2001.
Q. So, from February to June, he makes no complaints about his food being poisoned?
A. Well, again, we go into difficulty. I do not have indication of other complaints that were listed. So, yes, that may be the case. There are no other recorded complaints that I'm aware of regarding his food being poisoned.
Q. So, we have two complaints in the year 2001, and they're months apart --

A. They are.
Q. -- and you're telling me that that meets Diagnostic Criteria A for delusional disorder?
A. You asked me my opinion of what I thought he had, and I gave you my opinion. I didn't see him at that period in time.
Q. And you did not put that opinion in your report?
A. I didn't. I wasn't asked to diagnose him back in 2001.
Q. Okay. So, in 2002, did he have a psychotic disorder?
A. I'm going to make the same statement that I made for 2001. I believe that he had ongoing evidence of delusions affecting his ability to eat.
Q. So, we're going to go through the same thing again. He was not schizophrenic?
A. Right.
Q. He had a delusional disorder, correct?
A. Again, I didn't see him and I wasn't asked to evaluate him. But, yes -- well, as you pointed, we're going to go through the same thing again. It's substantively what I've already said about this.
Q. And you're basing your diagnosis of a delusional disorder on four complaints about being poisoned, two of which took place in January. So, I guess complaints two days apart, but they happened to take place in the same month counts as a month-long complaint?
A. You've asked me to render an opinion based on whether or

not I thought he had a psychotic process. For me to go back and retrospectively diagnose someone --

THE COURT: Okay. Hang on, guys. You don't need to repeat your qualifiers every time. Okay?

THE WITNESS: Okay.

THE COURT: It's taking a long time. Same point --

MS. ODEN: Okay.

THE COURT: -- the flip side of it, if you can frame the questions in a way that takes into account --

MS. ODEN: I will do my best.

THE COURT: -- the limits that he has identified on his ability to answer, that would also be helpful.

MS. ODEN: Okay.

BY MS. ODEN

Q. And please forgive me if I don't specify that I'm asking you to base your opinion on only the information that you had available to you, but that is only my intent. I'm only asking you based on the information that was made available to you that you considered.

Your opinion is that he had a delusional disorder, which requires a month-long span of having the delusions, and he had the delusion about being poisoned January 26th and January 28th?

A. Uh-huh. That's right.

Q. So, I'm struggling to understand how that qualifies as a

month-long period, except insofar as both complaints occurred in the same month.

A. I understand your struggle.

Q. But you don't find that to be a struggle?

A. I don't know how else to convey this. You asked me my opinion of what was happening then, and I've given you my opinion of what was happening. I have not attempted to assign some definitive diagnosis based on the records to the extent that I've looked at them, the very predicate that you put with the questions.

Q. Okay. In 2003, was Mr. Eldridge schizophrenic?

A. No.

Q. Okay. Did he have delusional disorder?

A. Yes, consistent with our discussion.

Q. Yes. Is that your opinion about Mr. Eldridge in 2004, based on the records that you reviewed?

A. I know the question becomes if not, what happened to it. However, I don't know if I can make that same argument for 2004. My apologies. I also cannot make that argument for 2003. I misspoke.

Q. Okay. So, which argument did you not want to make for 2003, the delusional --

A. The delusional disorder. My apologies. I became confused about the dates.

Q. Okay. So, in 2004, based on the records you reviewed, you

believe that Mr. Eldridge was neither schizophrenic nor suffering from a delusional disorder?
A. There was not evidence for me to support those, yes.
Q. And would you then say that based on the records, he did not suffer a psychotic disorder in 2004?
A. Based on the records, I would say that.
Q. How about 2005, based on the records that you reviewed?
A. I would make the same substantive argument, that he did not show evidence of a psychotic disorder.
Q. How about 2006, based on the records that you reviewed?
A. Right. 2006 becomes a little bit more difficult, because there was a period of time where there was some suspicion that he had it. But overall I do not think there is sufficient evidence to support a diagnosis of a psychotic disorder in 2006, '7, or '8.
Q. Thank you. Is it common for someone with delusional disorder to just get over it?
A. It isn't.
Q. That's pretty rare, right?
A. It is.
Q. Would you agree that in terms of diagnosing psychotic disorders, generally a person's delusions and their behavior operate in concert?
A. They often do. There are times that there can be discrepancies, but, yes, there's typically some concert to

their actions, yes.
Q. Would you agree that, generally speaking, delusions are in concert with each other?
A. I'm not sure how you mean that.
Q. And I'm not a psychologist, so my example may not be very good, but maybe it will help get the picture across. If a person has a delusion that they are a secret CIA spy, they may also have a delusion that they can read other people's thoughts, and so they use their thought-reading abilities as being a secret spy, or something like that.
A. Right. No, I understand, and I think that's a good example. Generally I think that delusions tend to be much more circumscribed than that. They tend to be more fixed than that. When you get into more major psychotic disorders, I think you can have more spillover of those symptoms. So, I would generally not make that argument for a delusion per se or a delusional disorder.
Q. Well, how about at least that delusions aren't usually actively contradicting each other, like, a person wouldn't have a delusion that they are the president of the United States and have a delusion that they are one of the untouchable castes from India --
A. Right.
Q. -- because that -- I mean, I don't know that that --
A. No, that's fine. Delusions typically do not contradict

each other. Reality and delusions certainly can. But two separate delusions do not unusually contradict each other.
Q. Okay. If somebody was complaining to you, hypothetically speaking, they were making complaints of delusions that were logically inconsistent, two things that couldn't exist at the same time, would that be suspicious to you?
A. If they were each delusional representations, yes, that would be suspicious.
Q. And what would that be suspicious of?
A. Well, again, you would think about the person fabricating symptoms or malingering.
Q. Now, we get into 2009. 2009 is a big year for Mr. Eldridge, right?
A. 2009 is a big year.
Q. Are you familiar with when Mr. Eldridge's case had big dates, for example, like when his execution was supposed to happen?
A. I do know, not off the top of my head. I can certainly look that up.
Q. But that was something that you took into account?
A. Yes.
Q. Okay. So, let's kind of back up and talk about the time period at the beginning of 2009. At the beginning part -- and this is all based on the records that you've reviewed.
A. Yes.

Q. Okay. January 9th, 2009, Mr. Eldridge complains of hearing voices all my life. Does that sound like something you've read before?
A. Yes.
Q. And I can get out the records if you need me to.
A. No, that's fine.
Q. And you also have copies there if you need them.
But the hallucinations didn't seem to be a significant problem for him, according to the therapist he talked to on that date. Do you remember that?
A. The date that you gave again was?
Q. January 9th, 2009.
A. That's not actually one of the specific dates that I have here.
Q. Okay.
A. The date that I have for 2009, I only have one from January 1st.
Q. Okay. So, I'm referring to Respondent's Exhibit 23, page 129, and I'm putting this up on the Elmo. This is the -- can you read that?
A. Yes.
Q. It's from January 9th, 2009.
A. I see that.
Q. I see that they weren't really taking his weight, at least not in these assessments, because these are cell side

assessments, right?
A. Right.
Q. So, his most recent vitals were from July 6th, 2006?
A. Right, there's often a long period where they have not updated the vitals.
Q. Because they're not going to open a death row guy's cell and put a scale on the floor and ask him to step on it?
A. I suspect they're not going to take a blood pressure cuff in either.
Q. Right. You've never actually seen them do these cell side assessments?
A. I've not been on death row. So, no, I haven't.
Q. Have you talked to any of the people that do the cell side assessments?
A. I have not.
Q. Do you know anything about the physical restrictions in terms of how big the window in the cell door is?
A. I've seen it, so I appreciate that it would be quite a difficult task, yes.
Q. Okay.
THE COURT: We'll take an afternoon break in just a few minutes when you get to a --
MS. ODEN: Yes, I'll finish this document, and then we can go.
THE COURT: All right.

BY MS. ODEN
Q. I'm flipping it over just so we can see who wrote this. This is from Julia Roy, who's a master's level psychologist. She notes that Mr. Eldridge reports a difficult time sleeping, hearing voices. He says he's losing weight along with a healthy appetite. He's hungry shortly after he eats. He said that he's on pork-free diet and often has only beans or peanut butter for dinner. He does appear to be thin, I believe. Upon entry patient reported he has -- experiences audio hallucinations all my life. This does not seem to be a significant problem for the patient. The patient was -- let me see if I can zoom in a little bit.
A. I see it.
Q. The patient was encouraged to send an SCR to medical to assess his qualification for a snack due to possible low BMI ratio. No mental illness noted at this time. His last clinical -- something. Relates that he has a history of paranoid personality traits.
And then I turn it over. It says he was alert -- sorry. Oriented times four; cooperative; normal speech; lucid, organized thought process; no delusions; appropriate thought content, free of hallucinations while reported; euthymic mood, congruent affect, good impulse control; fair insight and judgment. She concludes with no Axis I diagnosis.
A. Yes.

Q. You're familiar with that --
A. Yes.
Q. -- representation? February --
MS. ODEN: If you want to take a break, Judge.
THE COURT: No, go ahead --
MS. ODEN: Okay.
THE COURT: -- finish this document.
BY MS. ODEN
Q. February 2nd, 2009, he is complaining of losing weight and as we all know, his last vitals haven't been taken since 2006?
THE COURT: Is this the same document?
MS. ODEN: No, it's a different --
THE COURT: Okay. I thought you were still on the same document, and I thought you said you wanted to finish that document. So, we will begin as soon as -- in about 15 minutes. All right. Thank you.
(Recess from 3:00 p.m. to 3:15 p.m.)
THE COURT: All right. I think we're ready to resume.
MS. ODEN: Yes, ma'am.
THE COURT: Please be seated. Go ahead.

CROSS-EXAMINATION CONTINUED

BY MS. ODEN
Q. So, Dr. Roman, we were talking about 2009. We had discussed January 9th, 2009, where Julia Roy, the psychologist, noted that he had normal speech, was oriented, organized, all

that.

February 2nd, 2009, would you disagree that there are notes indicating that he's more or less doing fine, no Axis I diagnosis, the same kind of 90-day mental health assessment that we've talked about in other years?

A. I know those notes exist. Whether there's a note on that specific date, again, obviously without looking at the date, I trust you represent that correctly, but I don't know.

Q. Okay. Would you disagree, then, that the critical time period in 2009 appears to occur after around August 19th?

A. I would agree with that.

Q. Okay. And you would agree with me about that, because before August 19th, 2009, there's really not a whole lot of big complaints coming from Mr. Eldridge about his mental health?

A. There are not many things documented in the record, yes.

Q. Right. And, of course, all my questions are only referring to the records that are available. August 19th, 2009, happens to be the date that Mr. Eldridge's attorneys file his competency claim in the state courts. Are you aware of that?

A. I'm sure I was. I wouldn't have recalled the date offhand.

Q. Okay. You read their motion?

A. I did.

Q. Okay. And in that motion one of the bases that they claim that he is not competent was that multiple personality disorder?

A. I recall seeing that.
Q. Okay. But we know that that's most likely false?
A. Yes.
Q. Okay. Mr. Eldridge was evaluated on September 21st, 2009, by Dr. Mark Moeller, a psychiatrist for the state?
A. Yes.
Q. And that evaluation took place in the Harris County Jail?
A. Yes, I believe I recall that.
Q. Okay. And that was in part because on July 24th, 2009, Mr. Eldridge was bench warranted from Polunsky back to Houston so that he could appear in state court and receive his death warrant?
A. Yes.
Q. And August 5th, 2009, is when he got his -- he doesn't get it, but he was given his execution date, which was set for November 17th, 2009?
A. Yes.
Q. Okay. So, he's still here in Harris County. He's in the jail. He gets evaluated by Dr. Moeller. And you would agree with me that one of the unusual things that Mr. Eldridge says to Dr. Moeller is that he doesn't know if he has brothers or sisters?
A. That was an unusual statement.
Q. You would agree that most of the time when Mr. Eldridge is speaking with you, he doesn't have a stuttering problem?

A. That's true.
Q. Has he ever had a stuttering problem when speaking with you?
A. He sometimes has stopped and started as he said something, perhaps looking for a word, but he has not stuttered no.
Q. Okay. But Dr. Moeller did report that Eldridge stuttered for the first few moments or minutes?
A. I recall that.
Q. And suspiciously stopped stuttering, correct?
A. I do recall that, yes.
Q. And do you recall that Dr. Moeller noticed that when he asked Mr. Eldridge why he stopped stuttering, he got mad?
A. I recall something to that effect in the record, yes.
Q. Okay. After he was challenged about not stuttering, Dr. Moeller reports that Eldridge started stuttering again and then forgot apparently and didn't stutter for the rest of the evaluation. Would you agree that was suspicious as well?
A. It certainly is odd behavior, yes.
Q. Okay. You would not agree that it's suspicious for feigning or malingering?
A. Any time we see inconsistent evidence, as I think you've suggested before, it becomes a potential red flag in the column of, wow, I wonder if this might be malingering, I would agree with that.
Q. Okay.

A. But, again, extending from any particular example as opposed to the totality of the data set, but, yes, it's one of those let's put it in that column types of findings.
Q. Okay. Dr. Moeller noticed that Mr. Eldridge engaged in goal-directed, logical, oriented speech when it was to Mr. Eldridge's benefit, but would repeatedly say, "I don't know" or, "I don't understand" when it wasn't to his benefit. Do you remember that?
A. I do remember that statement, yes.
Q. Okay. And you know, of course, that Dr. Moeller concluded that these were gross inconsistencies, bizarre, and not congruent symptoms with known medical disorders or mental disorders, theatrical and contrived demeanor, and basically he concluded that Eldridge was malingering?
A. Yes, he did.
Q. Okay. So, I guess I should catch up on my little diagram here. I don't have my pen. So, I'll just say that October 14th, 2009, the state court denied Eldridge's competency for execution claim?
A. I recall that.
Q. Do you know that it found that Dr. Austin and Dr. Conroy's report failed to make -- thank you -- fail to make a substantial showing of Eldridge not having competency?
A. Yes.
Q. Okay. November 2nd, 2009, the U.S. Supreme Court denies

cert in the case. Are you aware of that?
A. I think I knew the fact. I certainly didn't know the date.
Q. Okay. And November 5th, 2009, Mr. Eldridge starts to display some symptoms. I'm specifically referring to a report from Dr. Estes. And that's in Respondent's Exhibit 23, page 134 to 135, which I will put up here.

So, this is November 5th, 2009. Once again, the weight is terribly dated. It's from 2006. "But Eldridge reported with some evidence of delusional/disorganized thinking. Nothing consistent or pervasive. Patient reports attempting self-harm on occasions in the past, but patient is a poor historian and reports he cannot remember when. Nothing in the notes suggests any attempts while in TDCJ. No mental health complaints. 'I already told them people in court.'"

And on the next page: Sloppily dressed, slightly dirty, hair messy. Easily distracted, inattentive. Normal in volume and rate of speech, conversational. Answers questions appropriately. Normal emotional expression, expresses self appropriately.

And the conclusion or the diagnosis down here on Axis I, diagnosis deferred. Disposition: No evidence of mental illness or need for mental health treatment at this time.

So, at this point even though there are some symptoms of disorganization, there are some symptoms of

nondisorganization, and the treatment provider decides I'm not going to make a diagnosis on Axis I at this point; is that fair to say?

A. That is how the record reads, yes.

Q. Okay. So, also on November 5th, 2009, and this is Respondent's Exhibit 21, Mr. Eldridge fills out his -- what they call "death packet." Are you familiar with death packets?

A. I have seen his death packet, yes.

Q. Okay. So, the first page of Respondent's Exhibit 21 is what they call an execution summary. And Mr. Eldridge has initialed that he has no witnesses. That his attorney handling his stay or appeal is Lee Wilson. And down here at the bottom it says he does not desire a will.

He made his -- I'm looking at the next page. He made his last meal request. He dictates that the money in his trust fund account will go to Mr. Wilson. His personal property will go to Mr. Wilson. And his remains will be handled by Mr. Wilson.

So, that's all taking place on November 5th, 2009?

A. Yes.

Q. So, at least as far as those documents seem to reflect, on November 5th, 2009, Mr. Eldridge is participating in the process of getting ready for his death?

A. At a minimum he's completing that form, yes.

Q. At a minimum he's completing that form, and he's not drawing pictures on it. He's not scribbling on it. He's not handing it back saying, "I don't understand what this is." He appears to be completing that form in a logical, goal-directed fashion, right?
A. Well, I don't know. Certainly some parts are typed. I assume he didn't type them. So, some things were prepared, it seems. Pretty much what he did was put his initials by certain choices. I don't know how much he was guided or directed or assisted, but, yes, indeed, he appears to have cooperated with the process however it was ultimately carried out.
Q. And when we talk about, you know, initialing choices, surely the last meal choices that are here, it's not as though every person on death row before they're executed is offered only pancakes, chocolate milk, peanut butter, apple, oatmeal cookies, and baked potato. Because we all know that some other inmates get moon pies or Big Red sodas or whatever, right?
A. Yes.
Q. So, these appear to be choices made by Mr. Eldridge, even if he didn't type them out?
A. Yes.
Q. Okay. And the last page of that document is the religious orientation statement. And it appears to indicate that Mr. Eldridge identified his religious beliefs as Muslim and said that he did not have a spiritual adviser or that he needed

to take, you know, whatever his final statement?
A. Yes.
Q. Okay. So, then we move forward to November 12th, 2009. He gets a visit from his attorney, Mr. Wiercioch. And November 16th, the Court of Criminal Appeals dismissed his competency claim. So, that brings us up to execution day. And are you familiar with the records indicating how Mr. Eldridge handled execution day?
A. I don't recall --
Q. Okay.
A. -- being familiar those records.
Q. Okay. Would you agree with me that in determining whether or not someone is competent to be executed, it's important to see what their mental status is leading up to and on the day of their execution?
A. I agree that would be salient information.
Q. Sure. So, I'm going to put up here Respondent's Exhibit 23. This is page 137. And I'm going to apologize, because I'm showing you my working copy of this. Maybe you can look under the scribble and see here that the date that was written on -- or typed out on the form is 11-19-2009.
A. I do see that.
Q. Okay. And the time that was typed was 16:18. So, that would be 4:18 p.m.; is that right?
A. Yes.

Q. Moving a little further, we still see that we have dated vitals from 2006. And then right here it says, "Seen this date at time. This is a late entry note. Patient seen cell side on 12 building at 15:35" -- or 3:35 -- "on 11-17-09"?
A. Yes.
Q. Okay. So, that explains why there's this scribble in the date and time?
A. I see, yes.
Q. So, this assessment or whatever you want to call it, took place at 3:35 on the day of Eldridge's scheduled execution?
A. Yes.
Q. Okay. So, I'm turning over to the backside of the page and it says that -- here the chart starts with a mental status exam?
A. Right.
Q. Appearance: Clothing, careless; grooming, normal. Motor activity, unremarkable; affect, appropriate; mood, euthymic; speech flow, normal; thought content, appropriate to mood and circumstances; though organization, logical and goal directed. Follow up in 90 days or upon request referral. And diagnosis or condition deferred on Axis I.
And that's from Julia Roy, the master's level psychologist --
A. Yes.
Q. -- is that right? Okay.

A. And I have seen this record.
Q. Are you aware or have you seen any other records that document anything about Mr. Eldridge's mental status, mental state, et cetera, leading up to immediately before or on the day of his execution?
A. I may have. As you raise that with me, I can't come up with a specific memory of what I may have seen in that regard.
Q. Did you write anything in your report about any documents or records that you saw about Eldridge's status on or about the date of his execution?
A. Obviously I could look, but as I think about it, I don't recall having made any specific statements in my report --
Q. Okay.
A. -- at the time of execution.
Q. And if there had been other records as you went through them preparing for your report, you would have noticed them and you would have noted this is how Eldridge was on the day of his execution? You would have put that in your report, right?
A. Obviously I didn't put it in my report. So, it would certainly be my hope that I would put it in the report. But clearly if I had such records, I did not put it in the report.
Q. Okay. So, then it's safe to say that this is the only thing we know about how Mr. Eldridge was on the day of his execution, based on the records and the data?
A. Yes. As we sit here, I don't know if there are other

records and if I've seen them.
Q. Right.
A. But, yes, indeed, the statement you made is accurate.
Q. Okay. So, he doesn't seem to be having any kind of psychotic break with reality on the day of his execution, based on the documents and the data that we have?
A. That is accurate, based on this, absolutely.
Q. Two days after the execution is stayed, because it was stayed on November 17th, 2009, two days later, November 19th, 2009, at 3:11 p.m., he is seen by Dr. Estes and he presented as cordial and verbal, but he had some mental confusion. He can't recall some recent events. He reports hearing voices that won't let him finish what he's saying, voices that told him not to talk to the psych staff, voices and his brother, Barry, were so hateful and abusive towards him.
You remember that?
A. Yes.
Q. Okay. Then the next day at 8:30 in the morning, there's another record that indicates that he's a poor historian without reliable recall past 72 hours. He thinks he lives with his brothers, although there's some evidence that this might be a dissociative -- there might be dissociative properties around the brothers?
A. I recall that.
Q. Michael and Barry constantly berate him, cursing. They

don't let him finish. They tell him he's stupid. The brothers and the mother appear in his cell.

I'm going to stop there and say, what we have is apparently an account of an auditory hallucination and a visual hallucination; is that right?

A. That seems like that would be accurate based on that report. Yes, I think that's true.

Q. Okay. So, I'll continue. He questions whether they're there or not and whether the interviewer is really there. He was observed eating from his food tray yesterday. He's going to go to Jester tomorrow.

Clothing, neat and clean. Grooming, normal. Attention, confused and variable concentration. Normal eye contact, responsive facial expression, restricted affect.

I'm going to stop there and say, so we seem to have some blend of positive and negative symptoms. Would you agree?

A. I think that seems like a reasonable statement.

Q. Okay. I'll continue: Normal speech flow. Exhibits free-flowing goal-oriented speech concerning present activities of daily living.

I'm going to stop there. You remember that part, right?

A. I don't know that I specifically recall that part.

Q. Okay. But you would agree that if one has normal eye

contact, a responsive facial expression, normal speech flow, free-flowing, goal-oriented speech about the present activities, those are kind of indications that a person is not currently psychotic? Wouldn't you agree?

A. Unfortunately, I wouldn't necessarily agree.

Q. Because someone could possibly be psychotic even though they have goal-directed, logical thought, good eye contact, normal, responsive facial expression?

A. As I've testified before, even people with psychosis are not psychotic 24/7. So, the fact that he has periods of normal functioning does not preclude the fact.

Q. Oh, in general he might be diagnosed as a schizophrenic but in that moment?

A. It would suggest that he was not having an active psychotic episode at that moment.

Q. Okay. I'll try to be more careful with my phrasing. Thank you.

So, if I can go back to my little chart here. When we're talking about 2009, so far up to the day of execution, which was November 17th, 2009, you would agree with me that he seemed to be doing mentally okay?

A. That would be a difficult question to agree with. There's a lot of evidence in the record to suggest that there were difficulties. I don't know in what context you mean doing mentally okay.

Q. Okay. I'll try to make it a little tighter. There was evidence that he had some complaints, but there was a spike upwards in the presentation of symptoms after the date of his execution?
A. That sounds like an accurate statement, yes.
Q. Okay. So, you're familiar with some records from when he was admitted into Jester IV on November -- I believe it was November -- well, he wasn't admitted to Jester IV, but they decided to admit him on November 20th, 2009, where they weighed him and he was only 139 pounds? You're familiar with those records?
A. I remember those records generally, yes.
Q. Okay. You're familiar about some records where he said to occupy himself, he claims he works with his brothers in a chemical plant?
A. Yes.
Q. Okay. Do you remember that that particular date, he said he was on death row, had an execution date recently and was given a delay? Do you remember that?
A. I remember those records. I don't recall whether he said that or whether that was a report of what was discussed, but, yes, I remember that being within the report.
Q. Okay. Okay. So, November 24th, 2009, he is admitted to Jester IV. And he's started on Risperdal, 1 milligram twice a day; is that right?

A. That is correct.
Q. Okay.
A. I'm sorry. What date again?
Q. November 24th --
A. Yes, that's what I have.
Q. -- 2009.
Upon admission, you would agree with me that his emotional state was described as social and he was described as having organized logical thought processes?
A. Well, obviously I could agree with you more directly if you're looking at that record that you're reading.
Q. Oh, okay.
A. But, again, I have no reason to believe you're misrepresenting it.
Q. So, I'm looking at Respondent's Exhibit 23, pages 164 to 166. So, this is January -- sorry, November 24th, 2009. This 150 pounds, this weight was measured on November 24th, 2009?
A. Right.
Q. Okay. I turn the page over, and it says that he complains of hearing voices and depressed. So, the mental health inpatient nursing assessment on page 165 says, "He's oriented to person, place, and situation. His behavior is alert and depressed. His emotional state is social. His thought processes are organized, logical, and delusional. His thought content is coherent. He reports hallucinations of hearing

voices and delusions." But there's no explanation there; is that right?
A. That's correct.
Q. Okay. Having organized, logical, delusional thought processes seems to be a contradiction, but you probably can't speak to what this person meant, if I'm going to understand correctly, because you weren't part of this?
A. Well, I can't. And, again, the difference between what he's reporting and what he's demonstrating at the moment, there can potentially be differences and that might be why the record reads that way.
Q. So, maybe the organized and logical refers to how he's speaking?
A. I would assume it is how he is speaking at that moment in time, yes.
Q. And maybe the delusional refers to what he's talking about?
A. That's a possibility or something they had observed prior to sitting with him at that moment. It's hard to know for sure.
Q. Okay. They would observe his thought process how?
A. Primarily we observe thought propose through speech.
Q. Okay. So, his thought process appears to be organized, logical, and delusional, but the thought content is coherent. That all seems to be kind of inconsistent, right?
A. The idea that it's -- that delusion is thrown within that

is what you mean?
Q. Well, the thought content --
A. Right.
Q. -- is distinguished from the thought process?
A. Yes.
Q. So, the content of his thought is coherent?
A. Yes.
Q. But the process is organized, logical, and delusional. That's hard to make sense out of that, isn't it?
A. It may be with the exception that, again, most delusions are not bizarre delusions. So, they may be things that are plausible, and that's the whole idea about them. So, it may sound very coherent, very logical, but clearly untrue. One could have a very coherent, logical discussion about being pursued by the CIA. We might disagree with that. We might think that was a very unusual thing that could not possibly be true, but it might be very organized, logical, and goal directed. There's no bizarreness in one's ability to communicate that. So, it could be that.
Q. Okay.
A. You would normally think they wouldn't put the content as coherent, but they may well have been suggesting it had that feeling like he knew what he was talking about even though it seemed totally deluded.
Q. Okay. But, unfortunately, this particular document doesn't

share anything about what it was that he said?
A. It really does not.
Q. Other than he was hearing voices?
A. Yes, and being delusional.
Q. Yeah. We don't know what he was having a delusion about?
A. We don't.
Q. Do you remember some other records that talked about once he was in Jester IV, complaining that everyone is thinking that I am lying and acting? Do you recall those?
A. I do recall those statements.
Q. Okay. Do you recall him reporting auditory and visual hallucinations, that people were attacking him outside his door?
A. I do recall that, yes.
Q. Do you recall that in December -- on December 3rd, he said that he knows that he's been in prison for 20 years for shooting someone?
A. There are a couple of places where there's come up, including in my report and Dr. Allen's report, so differentiating that specifically from the record, but, yes.
Q. He at least may have been factually aware of his situation, if not understanding?
A. Well, again, I'd probably need to see the document to know more specifically, but your question was whether I recall seeing that in the document, and I do recall seeing it. I

don't remember the document or the context well enough without looking at it.

Q. Okay. To summarize these things and speed things along because of the voluminous nature of the documents, let me see if I can summarize and tell me if you disagree with what my summary says.

Basically in December of 2009 he complains that -- or says that he's been talking to his brother. He's hearing voices. He claims symptoms that are in the domain of psychosis. Sometimes he complains of positive symptoms of schizophrenia and sometimes he doesn't. But generally he continues the pattern that we saw beginning after his execution date of an uptick in mental health symptoms?

A. I think that's adequately summarized, yes.

Q. Okay. So, in 2010, after his execution is stayed obviously, he complains of voices once or twice a month and the negative symptoms are also still kind of inconsistent. Would you agree?

A. I think that's an accurate statement, yes. I don't know about the once or twice a month per se --

Q. Okay.

A. -- but there are periodic records. I mean, as I look here at the dates that I have, it looks like they range from one to perhaps approximately three episodes where symptoms are documented within the record.

Q. And you're talking about per month?
A. Per month across 2010.
Q. Okay. So, it would be fair to say he complains of voices one to three times a month?
A. Again, the same thing we've talked about. I can't speak to what he complains about. I can speak to --
Q. What's in the records?
A. Exactly. And that much of it is documented one to three times a month.
Q. And, once again, I'm only talking about the records that you reviewed.
A. And I want to make sure I'm clear as well in my answer. Thank you.
Q. You have a section in your report titled "Food Delusions." I think it starts on page 4. And the next section is other notations about mental health issues.

THE COURT: Are you talking about the original or supplemental report?

MS. ODEN: The original report.

THE COURT: All right. Thank you.

A. Yes, I have.
Q. Could you please point us to any negative symptomatology that you document in your report coming from the records? And I'm talking about those two sections, either dealing with food delusions or other notions about mental health issues.

A. Again, in the food delusion section, and I'm looking at it, I wouldn't anticipate that I'm likely to focus on negative issues. I was specifically looking at delusions which is a positive symptom.

Let's see, in other notations -- I mean, there's a lot of stuff here. I'm happy to go through it if you want me to take the time to see what I can point to.

Q. Yes, I would like you to look and point out any negative symptoms --

A. Yes.

Q. -- in that section.

A. Fine. So, on page 5, the paragraph that starts on 1-27-04, there is a boldface section that says, "On 8-24-04, a mental health note indicated that he was experiencing increased depression but gave no diagnosis."

Now, that's not necessarily a negative symptom, but it is potentially consistent with negative symptoms.

Q. Okay.

A. I see no other instances that I specifically documented.

Q. Okay.

A. I know that there are some records that exist in terms of sleep issues and so on, and I'm not aware that I documented any of those things. I see no specific documentation of any other negative symptoms within my report.

Q. Okay.

A. Particularly in those two sections.
Q. Okay. Let's talk a little bit about the medications that Mr. Eldridge is on. Page 6 of your first report stated that risperidone is good for treating the negative symptoms of psychosis, like those related to anxiety and depression.

So, tell me what negative symptoms of psychosis are related to anxiety and depression, just so I'm clear.
A. The point being that when people have schizophrenia, often there are other symptoms that are not the positive symptoms and those are the kinds of things that are not usually treated by the so-called typical antipsychotic medications. So, when we talk about things like difficulty with sleep, when we talk about things like general affect, has an affect of flattening, when we talk about unusual aspects of their speech, those are things that can appear to be relatively more consistent with an anxiety or a depressed state. I don't mean to suggest that in a diagnostic sense, anxiety and depression. I mean that more as a general descriptor of somebody feeling more down or lower energy or feeling more agitated or irritable, those kinds of things.
Q. Okay. I want to talk specifically about something I see in the records and it comes from -- I'm trying to -- I believe that this is Exhibit 8 from the petitioner's exhibit binder. It's page 86. And if I'm wrong about that exhibit number, I apologize. But this is a record from the correctional managed

care, Jester IV, that's dated January 5th, 2010.
A. I see it.
Q. And it's got a relatively current weight from December 31st, 2009, of 170 pounds. And you remember looking at this record while you were making your diagnosis? Can you read it? Should I make it bigger?
A. You know, I'm actually focusing primarily on your highlights. They seem to stand out a little better.
Q. Okay. Well, the part that I have highlighted says, "He reported he opened a piece of meat and found pills in the meat."
This was a document that was put up on the Elmo yesterday during your direct examination for something else that had been highlighted earlier --
A. Right.
Q. -- which was, "He discussed problems at his unit with officers putting battery acid in his food."
A. Yes.
Q. "He accused them of trying to make him kill himself."
A. Yes.
Q. And the argument -- or the position that I understood you to take was that he was distinguishing between the guards at his old unit and the guards at Jester IV, in terms of suspecting the Polunsky guards and not suspecting Jester IV guards; is that correct?

A. I don't know if I made that specific to this particular note, but, yes, indeed, that was a statement that I made --
Q. Okay.
A. -- that he did see a distinction.
Q. And here in the document, what I had already read, is his statement that he opened a peace of piece of meat and found pills in the meat, that's in the current tense, isn't it?
A. It is, yes.
Q. Present tense?
A. Yes.
Q. Okay. So, later on, down here in the OA -- which I assume is some kind of observation and assessment?
A. I would suspect that's what it is.
Q. Okay. "Denies audiovisual hallucinations, no suicidal, homicidal ideation. Hygiene adequate. Speech coherent, within normal limits for rate and volume.

"The patient appears to deny the fact that he is on death row; and whenever the discussion goes that way, he becomes vague and distracted."

I'm going to stop there and ask you, that seems to say that when the conversation isn't going that way, he's less vague and less distracted. Does that sound like what that means?
A. That is what one would infer from that language.
Q. Okay. And I'll continue: "The symptoms reported during

the social history report do not jibe what patient reports today."

Did I read that correctly?

A. Yes, that is a correct rendition.

Q. And I'm turning it over just to note that this was written apparently by Dr. Hemant Patel, who's a psychiatrist there at Jester; is that right?

A. It's been signed by so many people. I'm not sure that I'm aware of their system to know exactly who it was that actually electronically signed it. But, yes, I see that his name is there.

Q. Okay. So, as you were looking at these records, you didn't perform any additional investigation so that you could understand the system by which when you see some important document like this, you know who wrote it and who just signed off on it later as having received it?

A. Well, I think that, generally speaking, we -- the answer to your question is no, I did not perform any additional investigation of that matter.

Q. If I represented to you that the first line or the first name is the person who wrote it and the remaining names are ones who were in a distribution list of some sort, would that surprise you?

A. No. It's what I've assumed is the case with the way that I understand electronic things occur.

Q. Okay. Okay. I want to talk a little bit about the medications that Mr. Eldridge has been on, and I want to focus on the first basic two months that he was getting medicated. Obviously he had been medicated for a week or so back in 2006, but I'm talking about when he was admitted to Jester IV in November of 2009 --
A. Yes.
Q. -- for about the next two months. And if we need to, we can pull all the individual pages that track all of his different clinic notes. But what I would like to do for a short version is read this to you and have you tell me if you think it sounds like what you read. If we need to go through it document by document, we can. But I'm hoping that it will sound familiar from your review of the records. Because you did have an opinion about how he reacted to the medication he was on, correct?
A. Of course. Of course, the great difficulty I have with what you're proposing is that in agreeing with an excerpt, it doesn't speak to the totality of the record.
Q. Of course.
A. So, I don't know if you're asking me to simply to say do I remember reviewing that. If you're asking me to draw a conclusion, that's a more difficult thing to do.
Q. I'm going to just ask if you remember reviewing it.
A. Sounds fine.

Q. And if I miss something or portray something in the wrong light, Ms. Ferry can definitely point out that mistake on my part.

So, would you agree that he started getting risperidone or Risperdal on November 24th, 2009?

A. That is correct, twice daily.

Q. I'm sorry?

A. Twice daily.

Q. Twice daily. And Risperdal and risperidone are the same drug?

A. Generic versus -- I'm sorry, brand versus generic name, yes.

Q. Okay. So, yesterday you were referring to the Rogers book, *Clinical Assessment*. This is a reliable book that other professionals like you rely on; is that right?

A. Yes, it is.

Q. Okay. So, would you agree if Dr. Resnick reported in this book that the median period of time from when you start taking medication to having a successful elimination of the symptoms that the medication is for, specifically antipsychotic medication, is 73 days?

A. I do know that citation in the book. And, yes, I have no reason to dispute that that is an adequate representation of a median benefit.

Q. Okay.

A. Yes.
Q. Okay. So, the meds start on November 24th, 2009. And then December 10th, 2009, do you recall reading that he claimed he hadn't slept for four days, but the nurse notes that he seems to have plenty of energy, had a full range of affect, good eye contact, and no distress, even though he's repeating that nobody believes him?
A. I recall that note. I also have the additional note here that the note stated that he was illogical and had tangential thinking.
Q. Illogical and tangential thinking?
A. That's the notation I have regarding that particular entry.
Q. Okay. So, let's make a chart. We've got the medication starting on November 24th, 2009, and we're looking at a period -- I kind of arbitrarily picked about two months later, to February 9th, 2010. So, obviously we know the medication isn't going to be able to start working on the day that it starts being given, right?
A. It certainly will not resolve symptoms in a rapid fashion.
Q. Thank you. And that's what I meant by the medication is working. It's biologically in there, though, but it's not changing your symptoms that fast?
A. Well, the point I was trying to draw is that there are certainly medications where people will sometimes show a rapid immediate response that we think may not be pharmacological.

The well-known placebo effect, which many people taking medication will report, we sometimes see the same thing for things like therapy with waiting list controls, who are not getting any treatment.

Q. Okay. I don't want to talk about the world of psychopharmacology. I want to limit it to talking about antipsychotic medications. So, Risperdal would not be expected to have a successful antipsychotic effect?

A. Immediately.

Q. Immediately?

A. That is a correct statement.

Q. Okay. So, he starts on 11-24. On 12-10 he has illogical and tangential as a negative symptom, but he has full range of affect and good eye contact and no distress. So, there's some inconsistency there, right?

A. I don't know if it's inconsistency or not.

Q. Okay.

A. As you, yourself, have pointed to, shortly before the date of his execution, he was reported to be -- I think you used the word in fairly good health -- fairly good mental health. There's certainly all sorts of indications within the record where he wasn't necessarily showing, for example, as we've discussed, negative symptoms.

Q. Okay.

A. So, I don't know if that's an improvement or not.

Q. I'm not talking about it being an improvement. I'm talking about the one day, December 10th. On one hand, he is recorded as having illogical and tangential thoughts?
A. Yes.
Q. On the other hand, he has a full range of affect, good eye contact, and no distress?
A. I do believe that's what the record says.
Q. And those two sets of symptoms are in some kind of inconsistency?
A. I don't know why you presume that they're inconsistent.
Q. Well, if somebody is having illogical and tangential thoughts, that implies that they are actively experiencing some kind of psychotic thought disorder, right?
A. I think there's a misrepresentation of the way that these things can present. One can certainly have a discussion with somebody who isn't having an active full-blown psychotic episode, and one can see evidence of illogical and tangential thinking in the course of sitting down and having what is otherwise a coherent logical discussion with them. So, those are not necessarily inconsistent with each other.
Q. Oh, okay. So, just because a person is noted as having illogical and tangential thoughts doesn't mean they're necessarily having an active psychotic event?
A. It doesn't mean that their sensorium is completely taken over by their psychotic symptomatology.

Q. Okay. December 14th, 2009, he reports being attacked, but the counselor or psychologist person says that he seemed undistressed by that. Do you recall that?
A. I do.
Q. And I assume that you're going to say that there does not seem to be an inconsistency between being attacked and being undistressed by that?
A. No, there's definitely an inconsistency there. It seems odd that somebody would report being attacked and not seem distressed by it.
Q. Okay.
A. That would seem to be a disconnect between affect in one's report.
Q. Okay.
A. But such a disconnect is not necessarily inconsistent with people with a major mental illness.
Q. Okay. December 23rd, 2009, he doesn't have any audio hallucinations. He doesn't have any visual hallucinations. He doesn't have any delusions, and he's not experiencing any distress.
A. I'm sorry. The date again?
Q. December 23rd, 2009.
A. The notation that I have indicates that he's reporting hearing voices for December 23rd.
Q. So, the document that I'm specifically looking at for

December 23rd is Respondent's Exhibit 24, page 334, and I'll put that up.

So, this is December 23rd. His vitals are 154 pounds, about two weeks old -- a week old. "Seen for staffing along with psych doctor. No distress noted. Responds to verbal stimuli. Patient is alert and gives eye contact. Breathing is unlabored. Denied suicide and homicidal ideation."

A. I see that.

Q. Okay. So, you must be looking at some other document or had been looking at some other document that reported that he was hearing voices?

A. I take it there must be another note --

Q. Sure.

A. -- relevant to that date.

Q. Okay. So, we have documents that report that on the same day to one person he says, "I'm hearing voices." If you're hearing voices, that means you are actively psychotic, right?

A. If you're reporting that you're hearing voices at that moment in time, yes, indeed.

Q. Right.

A. But, again, I really worry about the characterization of this. I mean --

Q. Sometimes these notes may be when they say patient reports or patient complains that he is hearing voices, the person

that's writing that down might not be very accurate?
A. They might not be. But it's almost as if there's a presumption that if one is hearing voices, that it's an hourlong or a daylong episode during which voices are occurring. It is not unheard of that one could have a momentarily moment of seconds or minutes to which they might even be attending to said voices and return immediately to the conversation that occurred. This is not unheard of in people with a psychotic disorder of schizophrenia. In fact, with an outpatient population, it's a very fairly common presentation that occurs.
Q. Right. But we're talking about somebody who is so seriously psychotic, allegedly, that the people that are in charge of him decide to put him in an inpatient facility, right?
A. Well, as I understand it, partly --
Q. That's a higher level of disorder, right?
A. Well, we have to be careful here, because you, yourself, have pointed out multiple evidence in the record that suggests that he's not having full-blown symptoms all the time. So, the premise that he is so actively psychotic they've decided to do that, how much of that is for treatment and further observation, I don't know. I just don't believe that we can make the characterization that he is having a full-blown psychotic break with reality in the way that, for example,

would that he were in the free world when manifesting those symptoms would necessarily warrant the psychiatric hospitalization.

Q. Okay. So, let me see if I can understand this from this perspective. If a person has a psychotic -- has a psychotic, an active psychotic moment --

A. Yes.

Q. -- hallucination, they're hearing voices sometime in the day --

A. Yes.

Q. -- aren't there -- isn't there a period of time before, leading up to that psychotic active moment and a period after where they still have disorganized thinking and problems related to the active psychotic episode?

A. It can be. And, indeed, for a major manifestation of a psychotic episode, what you just described is not only classic but absolutely accurate.

Q. So, if a person is hearing voices, that's a major psychotic episode, right?

A. This is the difficulty: It's not necessarily so. I mean, I've treated many patients on an outpatient basis who are hearing voices as they sit there in the room with me. They have driven there. They are driving back home.

Q. And it's not uncommon, I take it, that a person would be having an active audio hallucination while they're talking to

you right then and there?
A. Well, of course, it's uncommon. Schizophrenia and psychotic disorders do not commonly manifest. I mean, they're a relatively rare thing. But there are people who have psychotic presentations that are -- there's no suspicion of malingering, no reason to believe that there is a malinger presentation, who are still -- we can't say they're functioning normal lives, because it does affect their quality of life, but they are certainly living and navigating through their environment.
THE COURT: I think the only question is whether that person was having an active psychotic episode --
THE WITNESS: Right.
THE COURT: -- at that time --
THE WITNESS: Right.
THE COURT: -- because they're hearing voices.
THE WITNESS: Right. And I guess I'm just trying -- I mean, I thought the characterization was that if that's the case, are they going to be out for the count, like someone who's had a seizure might be.
BY MS. ODEN
Q. Okay. Please don't try to anticipate where I'm going with the question or the argument that I'm going to make.
A. Okay.
Q. Please only focus on the question that I ask.

A. I'm trying. Okay. Very well.
Q. So, on a given day, a person has an active psychotic episode of hearing voices, on that day wouldn't you expect that leading up to that active episode and after the active episode is completed, that they would still suffer from disorganized thoughts and other negative symptoms of that psychosis?
A. That is the most typical presentation, yes.
Q. Okay. And, so, on December 23rd, given this document that's up here, page 334, at least for this person in this document, whether it's before he had the active episode you mentioned or after, he does not appear to behave in a way that is consistent with leading up to an active episode or having just finished an active episode. I think those are called the prodromal or residual phases; am I right?
A. They are called that.
Q. And he is not behaving in a manner in this document that is consistent with either the prodromal or the residual phase?
A. Prodromal active and residual do not typically occur in the space of the same day. But, yes, in the reality -- based on what you're saying, yes, there does seem to be a difference in this report and the other report.
Q. Okay. Prodromal, residual, and active phases don't usually take place in one day, because they're usually longer than a day, right?
A. Right. They're part of the schizophrenic symptom

presentation over periods of time, yes.
Q. Okay. So, at least as far as this particular document is concerned, on December 23rd, 2009, he appears to be experiencing a reduction in the symptoms of his psychosis?
A. Based on this document, I could see where you draw that conclusion, yes.
Q. Okay. And yet there is some other document out there, which I don't know what that citation is and I'm not going to tear through the binders to find it, but there is some other document in the records that indicates to the contrary, that on that date, he was experiencing an active hallucination, if the person that wrote the record was accurate in the way that they wrote it?
A. And what I don't know is the notation I have is "reported hearing voices." I don't know if that was a, "I heard voices yesterday," or if that's saying, "I'm hearing voices right now."
Q. Okay. But at least insofar as the document that we're looking at, we know it appears that that medication is working on December 23rd?
A. I don't think we can draw the conclusion the medication is working.
Q. Okay. How about instead of concluding that the medicine is working, let's instead say whether there is no symptoms or whether there are symptoms?

A. I'm okay with that.
Q. Okay. So, December 23rd, 2009, the document that we saw, there were no symptoms?
A. If we are restricting it to that document, yes, there were no symptoms.
Q. Okay. Because the note that you have doesn't indicate whether it's that day he's hearing voices or had heard voices in the past?
A. Well, the note probably does, but my shorthand listing in the report doesn't specify the details of that note.
Q. Okay. All right. So, then we move on to -- you know, I bet I do know. I bet I do know where that is. That's Exhibit 23, page 214 to 217.
A. Do you want me to just pull the binder?
Q. I'm sorry?
A. Do you want me to pull the binder?
Q. No, no, no, that's okay. I've got it. I've gotten to the point I don't even open the binder anymore. I just tear it out.

So, this is Respondent's 23. I'm starting at page 212. This is a different record from what we were just looking at, but it's still December 23rd, 2009. This one is made at 4:33 in the afternoon, correct?
A. Yes.
Q. And the other document was made at 10:55 in the morning,

correct?
A. Yes.
Q. So, going back to page 212, which was the one you were referring to -- page 214, today he reports, "I'm hearing voices of my brother Michael who has been telling me to watch out for everyone." He states that everyone is out to get me.
I'm hearing voices of my brother Michael. That seems to indicate that he is currently hearing the voice of his brother Michael; is that right?
A. That's not how I read it. He's reporting today that he has been hearing him. I don't know if he's saying that that's today or in the recent past.
Q. Okay. Just follow along with me. Let's look. "I'm hearing," that's the gerund form of the verb, right? I'm busting out my English here.
A. I appreciate your English. That doesn't make it so though.
Q. Okay. So, at least what this person wrote is that he said, "I'm hearing voices"?
A. It says that today he reported that he's hearing voices. It didn't say that he's reporting hearing voices today. I don't know. I mean, in fairness, I don't know.
Q. Okay. So, we don't know. So, is all of this irrelevant? This is something that apparently was not very important to you as you were deciding whether or not Mr. Eldridge was malingering, because it doesn't seem to me like you decided to

parse whether on a particular day he was or was not having an active psychotic moment or whether he was or was not experiencing a reduction in symptoms?
A. I'm not sure what the question was.
Q. This doesn't appear to be something that was very important to you as you were coming up with your opinion, because here I have two documents from the same day a couple of hours apart and you're not sure whether it meant that he was currently hearing voices or had heard them in the past or wasn't hearing them at all and it doesn't seem like you have resolved this, but it doesn't seem like you're bothered by the inconsistency either.
A. None of those are questions. I'm not sure what you want me to respond to in that regard. Are you --
Q. Are you bothered by this? Does this seem inconsistent to you?
A. I don't think it necessarily seems inconsistent, because I can't tell from the record what it's referring to other than the fact that he has made a report of hearing voices.
Q. Okay. So, basically we can't -- what's going to happen is we're going to look at all these different documents from all these different days and what's going to happen is that we're never going to know whether the person meant that he was actually hearing that voice on that day or maybe they meant that he's reporting that he had heard the voices in the past?

A. Well, we may not, but I can't be responsible for how another professional documents. If they said he was observed to be or during our meeting he reported, then it becomes very clear. I can't be responsible for the ambiguity of the note. I understand that that was reported at some point. I don't know at what point in time.
Q. But don't you think it's important to track his symptoms? Don't you think it's important that if you can't account for the way that these documents are kept, doesn't that present to you substantial problems with diagnosing this person?
A. Well, of course, it does, which is one of the reasons that tracking was done of when symptoms were reported and how much of that was in the record. The specificity of does this record speak to something that happened today or at this particular time is much more difficult. I have nothing to go on other than what the person reported and wrote.
Q. So, don't we want to take what they wrote at face value?
A. Sure, I'm willing to take it at face value. The difficulty is you're parsing the language and suggesting that because of the particular part of speech, but I'm just looking at the plain understanding of that phrase. And all I know is that today -- that's what it says, "today he reports."
Q. Today he reports I'm hearing voices of my brother Michael?
A. Right.
Q. And to you that does not mean that he is saying that on

that day he is hearing voices?
A. I don't know if he heard them the night before and he's seeing this person and saying, "Hey, you know, since I've last saw you, here's what's going on." I have no context for that in terms of when that phenomenon occurred for Mr. Eldridge.
Q. Okay. So, I'm going to skip going through all these documents, because it's my understanding that it will be too difficult to base any kind of chronological understanding of when he seems to be experiencing a diminishment of his symptoms and when he's experiencing more symptoms, because we're not going to be able to rely on the wording in the documents; is that right?
Did you do a chronological evaluation of when his symptoms went up and down and up and down?
A. I have a chronological.
Q. Okay. And that's what pages of your first report, or is that the second report?
A. That's always the big bugaboo. They actually appear in both places, but probably the more concise delineation is the second report, on page 5, 6, and 7.
Q. So, we were talking about the time period starting November 24th, 2009?
A. Yes.
Q. And I'm looking at page 6 of your second report. The specific date we were talking about just now was December 23rd.

A. Yes.
Q. So, your way of phrasing this is "reported hearing voices." But I don't see anything about the other page that we had just looked at from 10:55 on December 23rd, where he doesn't say anything about hearing voices, and there's no distress noted. So, how did you decide to only write down the positive symptom and decided not to write down the inconsistency with his presentation on the same day?
A. Well, in terms of that correlation, I wonder how many times there are multiple records from a certain day, but it could be easily argued that I have many more examples of where symptoms were not reported within the record. For example, symptoms were not reported for whatever reason on 12-24 or 12-25, all the way through January 6th. So, whether there's a specific report that wasn't there or not, I don't know. But to write every indication of every report and whether they said yes or no to symptoms --
Q. It gets tiring, doesn't it?
A. It gets exhausting and probably unproductive.
Q. Does this pattern of inconsistency in his symptoms play any role in your evaluation of whether he was actually psychotic and actually responding to the medication?
A. It's very clear based on -- in my opinion, based on the changes that were made in the medication, that his response was inadequate. It is very waxing and waning. And to be able to

track whether he showed a specific response is difficult. The treatment team themselves not only increased dosage at several points, but even changed from an atypical to a typical antipsychotic, presumably -- now, again, the treating psychiatrists would have to speak to this, in my estimation, based on what I saw in the record, I assumed it was because of the prominent existence of positive symptoms, such as delusions and hallucinations that were continuing.

So, as I looked at the record, it appeared to me that while he had some amelioration of symptoms over time, that the positive symptoms were continuing, which was one of the reasons for the change to chlorpromazine and ultimately to -- and I'll say Navane, because it's hard to pronounce the other name.

Q. So, if I understand you correctly, the varying pattern of his symptoms, you find it more easily explained as waxing and waning. How did you decide that it was waxing and waning versus the fatigue that a person who is malingering experiences with the effort of trying to make up symptoms all the time and, therefore, sometimes they just don't make up symptoms?

A. Obviously that's a competing hypothesis. In terms of what was happening, this seemed completely consistent with what was reported, the way he was being treated, the notations in the record, including notations in the record that seemed to lead to changes from the treatment team. Again, we have only the

record to go on. I didn't get to observe him throughout these days. So, within the available record, there was a significant indication, based on the chronology I have here, of him continuing to have active symptomatology.

Q. And, again, that active symptomatology and the changes in the medication that was prescribed seems to have been driven by Mr. Eldridge's reports of positive symptoms?

A. There are some reports where people talked about him exhibiting behavior that might have been consistent with observing a delusion or -- I'm sorry, observing a hallucination, but, yes, primarily these were based on reports.

Q. Okay. I would like to change gears a little bit and talk to you about the detection and documentation of malingering by staff at TDCJ. A couple of times in your report and just now, it seems as though you are saying, look, these professionals already diagnosed him as a schizophrenic. And they're treating him with medication as a schizophrenic. So, he's a schizophrenic and why are we arguing about this?

And I know that that's not a very fair characterization, because I know you understand why we're here. But it seems that a lot of your opinion relies on the fact that somebody has already done this work and has already formed this conclusion. Is that fair to say?

A. So, there are two things. That is a part of it, that people who are with him every day, people who are involved in

his care have formed that opinion based on a more direct and more immediate feedback mechanism than I have available to me. But in addition, there is evidence within the chart that is consistent with the documentation of those things. So, I think there's great correspondence between the fact that they have diagnosed him and are treating him and the things that I see within the clinical record. If they were treating him and all of this stuff goes away, I wouldn't draw the same kinds of conclusions.

Q. Let's talk about the time period after Mr. Eldridge was kicked out of Jester IV for malingering in 2006 --

A. Yes.

Q. -- 2001, I apologize. What indication do you ever get from the records that you reviewed that the staff ever considered malingering as an option? Was there anything ever written anywhere about rule out malingering?

A. Malingering is not a diagnosis per se. So, I wouldn't necessarily expect that they were going to be saying that. I don't recall that in the record. I recall that they were evaluating him because of the concerns of symptoms that he presented.

Q. So, leaving aside the issue of whether or not malingering is a diagnosis, because it does have a diagnostic code in the DSM --

A. Well, it has a V code, and V codes are not diagnostic

codes.
Q. Oh. Basically what you're saying is that the staff that treated him wasn't considering malingering, because they were trying to treat him for symptoms that he had been reported as having?
A. I'm sorry. You asked me if I recall anything in the record that said, "Rule out malingering." I'm saying that I didn't recall it. It may be there. I don't recall it as I sit here. There's no doubt in my mind that they were looking at the question of whether he had bona fide symptoms or they felt the symptoms didn't make sense.
Q. And you base the lack of that, the fact that there's no doubt in your mind that they did this on what?
A. On the fact that as I understand it, he was put in there in order to perform additional observation on him.
Q. And what do you see in the records that indicates that they even considered malingering as a possible explanation?
A. There are a number of notes where they describe that he had certain symptoms that they thought were not believable and that ultimately they didn't think there was evidence of a mental illness and that he didn't belong in that unit.
Q. Okay. That's from Dr. Woodrick and Dr. Joseph back in 2001.
A. Right.
Q. And, once again, I'm referring to his stay in Jester IV in

2009 and his more current presentation.
A. I'm sorry. I heard you say you were going back to Jester in 2001.
Q. Okay. And maybe you misheard me. I am not talking about when he got kicked out of Jester for malingering.
A. I'm sorry. I thought that's what you specifically said you were going back to.
Q. Because obviously that would be what you would look at.
A. Okay.
Q. Talking about only the records that you reviewed --
A. Yes.
Q. -- from the time period after that, from when he was admitted to Jester IV in 2009 --
A. Yes.
Q. -- and his mental health care afterwards --
A. Yes.
Q. -- even in Polunsky. Where in the records do you see that anybody considered malingering as a possible explanation for his symptoms?
A. Now, again, I'm struggling with dates. We've looked at some records where people have come up with malingering, but I will admit that it was not an active phrase that was used frequently throughout the records.
Q. And I will encourage you, if you do think of a place or a time when you think there might have been malingering

considered, I would love to hear it. But if I represent to you that it is not documented as something that they considered, would that surprise you?

A. There was testimony given to this effect in terms of the issue of treatment. I guess I make the presumption that if one is going to treat an individual, that they presume that there is some legitimacy to the complaints. But in terms of formally considering this to be malingering and doing formal evaluations for malingering, yes, indeed, it appears to me that that wasn't done. But rarely has there been formal evaluation over that period of time on this individual.

Q. Would it be something you would take into account in your forensic assessment to know whether or not the culture for staff involved in Mr. Eldridge's treatment was -- whether or not the staff was encouraged to consider malingering if facts supported it?

A. Yes, in the same way that I would take into account whether I thought that they would find evidence of psychopathology to be meaningful and worth considering, yes.

Q. And yesterday you were here for Dr. Nathan's testimony, that in previous years there was pressure on the staff to not diagnose malingering out of concern that people that needed treatment might not get the treatment they needed if malingering was considered?

A. I did hear the testimony, yes.

Q. Okay. Would it surprise you to know that there are some staff members who still feel that malingering is not appropriate for them to consider?
A. It wouldn't surprise me to know that.
Q. Okay. Could that maybe be an explanation of why in some of these records we're not seeing rule out malingering or even a consideration that these inconsistent symptoms might be because he's malingering?
A. Well, it could be. But, again, it becomes difficult, because, there are earlier records prior to this period where some of those things are indicated and even Dr. Nathan gave evidence that that's no longer a concern that's being raised in terms of not looking at that. So, it's not like the records have not had indications of malingering. It's certainly something that -- for which there is precedent.
Q. Did you talk to any of the staff that was involved in Mr. Eldridge's treatment or diagnosis?
A. I did not.
Q. Okay. Would it surprise you to know that the staff, meaning nurses and not necessarily the psychologists and the psychiatrists, because, of course, they know what malingering is, but staff, like, nurses or the med techs and the people that make sure that they're staying in their cells, are not trained about what malingering is?
A. It wouldn't surprise me that they wouldn't necessarily know

what that word meant or what to do with it, but I suspect if you said, you know, like if he's faking it, I suspect they would know exactly what that means.

Q. Okay. Sure. Because everybody knows what faking is? Sure. I mean --

A. I suspect.

Q. You would hope. What about whether or not they're encouraged to follow up on suspicions of faking or even if they're encouraged to document it, would it surprise you if they said, no, we're not encouraged, we're not supposed to document it?

A. It would surprise me, I think, if they said, no, we're not supposed to document it. The fact that they might say they're not encouraged to document it, I wouldn't think they would be necessarily encouraged to document something one way or another.

Q. Okay. So, the fact that Mr. Eldridge was treated by Jester IV and Polunsky doesn't necessarily mean that they decided he wasn't malingering. It couldn't have been because some of the people that were on the front line, so to speak, who were observing him in a day-to-day fashion, we don't know, but they might not have been documenting things like that, right?

A. That is certainly a possibility.

Q. Okay. One of the things that you said -- and I think I'm going back to something we talked about a little earlier, but

one of the things that you said on direct examination was that you were comparing his delusions when he changed location from Jester to Polunsky and you said you would be more suspicious if he had the same belief about the correctional officers poisoning his food in both places. Do you remember saying that?

A. I do remember saying that, yes.

Q. Because if it is a fixed, circumscribed, specific delusion, it couldn't be about the guards in general. It would have to be -- it would be too vague to be a true delusion. Do you remember saying that?

A. I don't know if I said it couldn't be about the guards in general. It sort of could be, but the way that I've understood his delusion to be, it wasn't about the guards. It was about that atmosphere, because it wasn't just the guards.

Q. It was about who else?

A. It was about inmates and gang members and there's this entire conspiracy at the Polunsky unit. So, because of the specificity of that in terms of the actors and the location, within the way that I conceptualize and think about delusions, the way that I think that the literature supports looking at delusions, yes, I maintain what I said, that it would be suspicious if he went to Jester and was not feeling better about eating.

Q. Even though the document that we showed earlier, page 86

of, again, I believe it's Petitioner's Exhibit 8, that same document said that he looked through his meat and found pills in his meat in Jester IV?
A. Right. Well, it doesn't necessarily mean that one no longer has it on their mind, the idea that it completely goes away. I mean, that would be an odd sort of thing. It isn't like slamming on the brakes. But it is my understanding that he wasn't having the same complaints. Indeed, he was eating when the transfer was made.
Q. Is it culturally abnormal for an inmate on death row to feel that guards and inmates and gang members communicate with each other and work in concert to foster their goals?
A. No, that's not an unusual belief.
Q. Okay. Because that's true, right?
A. Certainly.
Q. And we've all heard about gangs still existing in prison. Just because they were arrested on the street doesn't mean they abandon their gang membership?
A. Yes.
Q. And we talked earlier this morning about how it's completely conceivable that a guard puts his thumb in the guy's food by accident and then it snowballs into a taunting kind of thing?
A. Indeed.
Q. So, there's plenty of logical, rational reasons that could

underlay Mr. Eldridge's irritation about his food being messed with?

A. There are certainly dimensions that could account for it, yes, that's true.

Q. Okay. I want to talk about Respondent's Exhibit 29. And I'm specifically looking at pages 93 and 94. This is a letter from Mr. Eldridge, and it was written on May 3rd, 2010. This is a letter that you talked about during direct examination. I said May 3rd, but that's the date at the top. This is --

A. May 6th?

Q. Yeah, I was talking about May 6th. That's the letter where he says, "Things are running through my mind. I don't know if I'm coming or going. I'll tell you a little of what I see. I talk to you and let you see the nightmares."

You read that letter on the Elmo yesterday, remember?

A. If I recall correctly, that was in response to Jennifer?

Q. Let me look. It might be. No, this is a letter to Beatrice. He writes the same letters to many different people?

A. Yes, he does. Yes, about going home. Yes, I recall.

Q. So, I'm looking at the top of that page, up here where it says 5-3-2010.

A. Yes.

Q. "Today is just a day like all the other days. Sitting here looking out the window as time goes by. As I look at the sun

run by, I do not let time do me. I do time. I am said time" -- and maybe he means sad -- "I am sad time can run you down. I looking crazy just looking up one wall and down the other wall. Looking at bugs outside my cell window. What a bug's life.

"Also today I see a doctor, a good doctor. He said I am 200 pounds now, and this is a good thing. All my blood work came back okay."

This is, I think, the letter or one of the copies of the letter where it was described as kind of a journal thing?

A. Yes.

Q. He's describing what is going on for him on whatever day presumably?

A. Yes.

Q. At the top of the letter, it says, "Inmates C. Ben, Jr., and Riles spelled words throughout this letter." And you'd agree with me that we see stuff like that at the top of so many of his letters?

A. Virtually all of them.

Q. Yeah. He always seems to give credit if somebody else helped him with spelling. Are you familiar with who Inmate Riles is?

A. I am not.

Q. Would it surprise you to know that Riles -- obviously he's

another death row inmate?
A. Yes.
Q. Do you remember another letter by Mr. Eldridge in which he references his attorney wanting to make sure that he doesn't spend years here like Riles going through hell for 36 years on death row?
A. Yes, I do. And now that you say that, I know who Riles is in that context.
Q. Okay. I'm sure that we're going to look at that letter later on. But I'm wondering if you're also familiar because of your forensic experience, if you're familiar with Riles' claim about competency to be executed?
A. I am not familiar with Riles' claim about competency to be executed.
Q. Well, then I'm going to describe a little bit about it and you can tell me if it changes any of your perspective. It probably may not change it right now, but I'll ask you again at the end when we've added a bunch of new things.

I would like you to take into consideration, hypothetically speaking, that Inmate Riles has been on death row for many, many years and is one of those people that is alleged to be chemically competent and that every couple years when he is due again for another psychological evaluation, he stops taking his medication for a couple of weeks before the evaluation and descends into madness and he is evaluated and

they decide he's not competent and then he starts taking his medication again and goes along fine.

Would that be something you would want to know, considering that apparently Mr. Eldridge has contact with him and communication with him on death row?

A. Do you mean would I want to know that with regard to Eldridge's situation?

Q. Uh-huh.

A. I don't know how to respond to that. Now that I know that, I'm happy to know the fact.

Q. It's kind of interesting, right? Because it means that Eldridge is having some kind of communication with a person who may know something more than the average bear about the issue of competency to be executed, right?

A. Yes.

Q. Okay. Now, you remember that a lot of other mail refers to Mr. Eldridge getting help from Inmate Jeff Wood?

A. That I do recall, yes.

Q. And I know you know who Jeff Wood is.

A. I do know Jeff Wood, yes.

Q. Jeff Wood knows more than the average bear or more than the average death row bear about competency to be executed as well, right?

A. I don't know that I have an opinion on that.

Q. Okay.

A. But I will take your representation.
Q. Okay. But he at least knows what competency for execution is all about?
A. Certainly.
Q. Okay. So, one of the things that was interesting to me about that letter that was talked about yesterday -- and this is the one to Beatrice, but it's that same content. This is the next page. "I do all kinds of things. I have a good life, and then the nightmares begin. By some kind of way I'm here at TDC Jester IV unit. How did TDCJ get me here from my family?"
That theme happens a couple of times in his letters, doesn't it?
A. It does.
Q. And you would agree with me that one of the issues that came up in Mr. Wood's case, one of the issues the court focused on -- let me ask, did you read the Court's opinion?
A. I did read the Court's opinion.
Q. Okay. So, you know that Judge Garcia focused on his opinion and Dr. Conroy's opinion about the believability of Jeff Wood's delusions, because Jeff Wood's delusions did not have any action that was in concert with them. He didn't act, to use contract terms, in reliance on his delusions. You understood that from that opinion, right?
A. I understood this was a point that was made in the opinion, yes.

Q. Yes. And, so, in fact, Judge Garcia mentions in his opinion, based on Dr. Conroy's testimony in that case -- and you heard Dr. Conroy's testimony?
A. I did.
Q. Okay. So, an important sticking point was Jeff Wood never acted in reliance on his delusions. In fact, the judge says, he didn't even write to his family. He had 1100 pages of letters with his family and not once did Jeff Wood say, "And there's this conspiracy between the judge and the district attorney to see that I am put to death, because they're correct," and that was a big deal in Jeff Wood's case, right?
A. That was a big deal in Jeff Wood's case.
Q. In the opinion, that there was no action in concert with Jeff Wood's delusion?
A. I don't know how much you want me to speak to the Wood case and my idea about the opinion, I mean.
Q. I just want you to answer that question. Do you understand from that opinion and from Dr. Conroy's testimony in that case and from your own knowledge, that there was no action by Jeff Wood in concert with his delusion about this conspiracy, to the point that there was nothing even mentioned in his letters?
A. This is the difficulty: From what I know about that case, I don't think it's clear that there was no action in concert with that opinion. But, yes, I completely agree, that this is what was in Yogi's write-up of the case, yes, indeed.

Q. Actually in Judge Orlando Garcia's write-up of the case, right? The opinion was by Judge Orlando Garcia?
A. Yes, Judge Garcia signed the report, yes, indeed. It was issued by his court.
Q. Okay. So, the fact that -- so, now we do have references to the delusions in the letters, don't we?
A. Yes.
Q. Okay. One of the documents that was referenced during your direct examination was Petitioner's Exhibit 8 at page 286. And that is dated December 12th, 2011. It's from the Outpatient Mental Health Services. Does that look familiar?
A. Yes.
Q. I know it's kind of hard when it's just the basic detail of it.
A. There are so many documents. Yes, it looks familiar.

THE COURT: What page is this?

MS. ODEN: This is Plaintiff's 8, page 286.

THE COURT: 2-8-6?

MS. ODEN: 2-8-6.

THE COURT: Thank you.

BY MS. ODEN
Q. So, I'm looking towards the bottom of the page and I notice that at least on this date, this examiner said that he was intact to person, place, time, and situation. His appearance was appropriate. Hygiene well-kept. Behavior cooperative.

Good eye contact. Spontaneous, within normal limits rate and volume of speech.

Then the next page, 287, his mood was dysphoric and affect constricted, but sensorium was clear and his thought process was coherent, logical, and goal directed.

So, on one hand, we have this letter that was referred to -- I have the Beatrice copy, but during the direct examination, it was to Jennifer, right, about sitting at the table -- or it wasn't to Jennifer. It was sitting at the table with my wife and I was pulled from one setting to the other. And here you have a mental health professional evaluating him on the same day and aside from the dysphoric mood and the constricted affect, everything else -- he's oriented; his hygiene is good; his eye contact is good; his thought process is coherent, logical, and goal directed. That's an inconsistency, right?

A. That's an inconsistency.

Q. Okay. Is that a suspicious inconsistency for you?

A. Again, if one is going to tabulate columns, it's something where one might put in the column of saying, huh, that's interesting.

Q. Okay. I want to ask you a hypothetical and help me, because I'm not going to get it worded just right. I want you to imagine a hypothetical person who duplicates the content of Mr. Eldridge's complaints. And by content what I mean is the

things that he says he's experiencing. So, this person complains about hearing voices. This person is on death row, but they say that they're leaving death row to go home. They say that they're being poisoned by guards.

A. Yes, I understand.

Q. Okay. How would that person present differently in a way that made you know that they were malingering? Same content, but talk to me about the noncontent stuff.

A. Obviously there are a number of ways one could answer that. Among the things that would come to mind for me is that they would be very invested in letting as many people as possible know about that symptomatology as frequently as possible.

Q. Okay.

A. As we look at the circumstances in this case, timing, it seems to me, would make a difference. You mentioned the spike after his stay of execution. I would think it would be relevant to have a spike before the stay of his execution, would be something that I would look at and I would say, Wow, that's interesting. Suddenly he has all of these symptoms to allow his lawyers to presumably make that argument.

I would expect that -- again, this is an individual who's on very high doses of antipsychotic medication, where we understand he's taking it with presumably as much as 80 percent compliance, from yesterday's testimony. This is some pretty powerful stuff. I would expect that this

is an individual who would have far more negative affects on that medication in terms of sedation or other kinds of things.

Q. Let me stop you there and just inquire. Why would a malingerer be more physically affected by the medication than a nonmalingerer?

A. Because when we look at these psychoactive agents, the whole premise of giving them is that there is an impairment in the underlying neurochemical processes. And by targeting these medications, what we're doing is we're affecting particular receptor sites.

So, in the same way that if you gave -- I mean, if you will permit this, if you gave insulin to somebody who isn't diabetic, this could have adverse consequences. So, with most medications, if a person does not actually have that condition, if their underlying neurochemistry is normal and you give them particularly the kinds of doses that Dr. Nathan himself described as high dose medication, they typically would show a greater degree of side effects, because it's, frankly, too much of an impact on the system.

Q. Because they weren't imbalanced to begin with?

A. Right, that would be the presumption. So, those are some things that I would think about. The idea that somebody is taking this medication, maybe there's some evidence that they're actually getting worse. I mean, if you will -- and I don't mean to do this as a direct point, counterpoint by any

means, but presumably having more negative symptoms than the individual is showing, the idea being that all of a sudden there are lots of indications of negative symptoms because they are overmedicated, because obviously they didn't have the condition to begin with.

Q. So, you would expect more negative symptoms because they are side effects of the medications?

A. I would think that that would -- your question was what would make me suspicious. That would be something that I would see that would make me think that that's an unusual finding.

Q. Okay. So, is that the list? That's it? That's --

A. Well there are probably more things that I could add to that list, but I don't know how much you want me to speculate in a hypothetical.

Q. Well, I mean, I'm just trying to get a picture so that I can work backwards from that, the reason that Mr. Eldridge does not appear to be a malingerer to you is the contrary of those four things. So, if I'm missing something, I want to know.

A. But I'm not sure it's the contrary of those four things. Because one also has to look at the data set in an active way. You know, the great consistency or inconsistency trap is the idea that if you're too consistent, obviously you've got to be malingering presumably, because you've remembered your story. And if you're too inconsistent, well, obviously that's an unusual thing, too. If the symptoms are too significant,

that's an indication of feigning. If there aren't enough symptoms, clearly one isn't feigning.

Q. Well, let me ask about the inconsistency trap since we're talking about it. And I don't have that page out and I'm not going to go through the book. But that one sentence from that one article, that doesn't mean that that particular chapter of the book concludes that we're not supposed to address inconsistency as a major element of diagnosing malingering?

A. No, it doesn't conclude that at all.

Q. In fact, that chapter and the whole book is pretty much geared towards the opposite. You do have to look at inconsistency in presentation to evaluate malingering?

A. That inconsistency is very important, yes, indeed.

Q. Okay. So, it is not the case that any time you appeal to an inconsistency, you're setting up this no-win situation for the poor inmate and you shouldn't look at inconsistency at all?

A. No, I understand it is presented as a caution for the evaluator rather than as a guideline that says inconsistency should be ignored.

Q. Okay.

THE COURT: Before you launch into the rest of this part of your examination, how much more do you think you will -- how much longer do you think you will be?

MS. ODEN: I could lie and say that I will get through this in the next half an hour.

THE COURT: How much longer --

MS. ODEN: I didn't realize it was already 6:00.

THE COURT: It's 5:00.

MS. ODEN: Oh, it is? Oh, I'm sorry. I can't read your clock. I can probably finish in an hour and a half. I'm sorry.

THE COURT: No, you're not. It's pretty repetitious for both of you. You keep -- in the way the questions are asked and the way the questions are answered, there's a lot of repetition. So, I think we could go a little bit faster, if at all possible, in both question and answer. Let's go till 5:35 and see where we are.

MS. ODEN: Yes, ma'am. Okay.

BY MS. ODEN

Q. Let's talk about what happened during the week after you showed Mr. Eldridge the photographs of Cynthia and Chirrsa.

A. Yes.

Q. This is -- so, you saw him February 9th, 2010, and again sometime in the early part of May 2010; is that right?

A. February 9th and May 7th of 2010.

Q. May 7th. Okay.

A. I'm sorry. May 17th. I misspoke.

Q. May 17th. Okay. So, what I'm looking at is Petitioner's -- I believe it's Petitioner's Exhibit 8, page 131, and it's a document from the day after your evaluation,

May 18th, 2010?
A. That's correct.
Q. And this is the document that you talked about on direct, where he says he keeps thinking about the pictures. He doesn't think he's been incarcerated for 20 years. He's just been going about his life.
A. Yes.
Q. But at that point in time, at least according to this observer, it does not appear that he was going through an active psychotic episode in that moment, does it?
A. No, it does not.
Q. Okay. Page 133 from the same record, the same date, May 18th, again, he's talking about, to a different person, he had the visit from the lawyer, doctor. He spent hours with him. "Something's messed up my head. I didn't get any sleep on it last night."

Wouldn't it seem that someone who dismisses these photographs as just obviously not real, because I know that Cynthia is alive, wouldn't they not be disturbed about the pictures?
A. I'm sorry. Wouldn't they not be disturbed? Do you mean they would not be disturbed? Is that how I understand that?
THE COURT: Can you ask it so it's not a double negative?
MS. ODEN: I'm sorry.

BY MS. ODEN
Q. If they were convinced that the person was alive, they wouldn't have this reaction?
A. I think they would have the reaction. There's no reason to believe that when you confront a delusion that they will dismiss the evidence. The evidence is that the delusion will not go away.
Q. So, the fact that he is upset by the content of the pictures, what do you attribute that upsetness to, if anything?
A. Well, I don't know for sure and I don't know how much to gauge his upset, but they were very disturbing photographs.
Q. And your position is he couldn't be upset by seeing them -- that upsetness could not be because he realizes I killed this woman and her child and I caused this loss of life?
A. No, it could be.
Q. Okay. We don't know?
A. We don't know for sure. My point about the delusion is, I wouldn't expect it to stick if it's a true delusion.
Q. You wouldn't except his upsetness to stick?
A. His realization that, whoa, this is real, these people are really dead, and obviously it had something to do with me, or even these people are really dead.
Q. Okay.
THE COURT: Did he have doubts as to whether his daughter was dead? I don't recall that in the records.

THE WITNESS: I only know of two places in the record where he ever even makes a reference to the fact that he acknowledges that somebody says that she's dead. One occurs in the competency hearing. One is in Dr. Allen's evaluation. I don't know if he told Dr. Allen directly or not. So, no, he has never acknowledged that as far as I know outside of that.

THE COURT: Does he visit his daughter or have her visit him?

THE WITNESS: No. And his daughter is not biological.

THE COURT: When he sees the pictures of the child, the dead child --

THE WITNESS: Right.

THE COURT: -- that you showed him --

THE WITNESS: Yes.

THE COURT: -- was there a denial of her being dead?

THE WITNESS: No, there wasn't. And he said nothing other than looking and suddenly passing them back, he spoke no words regarding her specifically.

THE COURT: All right.

BY MS. ODEN

Q. I'm sorry. He didn't say, "I guess it's true. I guess I must have did this"?

A. No, he did. He absolutely said that. But with regard to making a specific statement about Chirrsa, he did not say anything about her specifically.

THE COURT: That's pretty specific, isn't it.

THE WITNESS: It is pretty specific.

BY MS. ODEN

Q. You talked about whether delusions are typically self-serving. And I'm just wondering if we could talk again, the three delusions that we're talking about in this case are Cynthia is alive, I have a normal life outside the prison walls, and the guards are poisoning me. So, you said that the guards are poisoning me delusion is not self-serving, because it makes him lose weight?

A. And not eat food.

Q. Or it could make him not eat food?

A. Right, absolutely.

Q. Or it could just make him eat commissary food and share food with other inmates, but that's aside from the point.

The other two delusions, Cynthia being alive is pretty self-serving, wouldn't you agree?

A. I don't dispute that.

Q. It helps him on a legal basis and in a real life basis?

A. And it seems to me that even if we presume that he has no knowledge of the fact that it's helping him on that basis, sure, the fact that somebody he knows is alive is more consistent with something that is self-serving than something that works against him, like a troubling delusion, yes.

Q. Yeah. Like, I believe the some of the questions that we

heard yesterday indicated, it could be a way to go to your happy place and think about a better time in your life where you had a relationship and you had a normal life and things were good, and so that's much more pleasant than looking at the wall and not letting time do you, you do time, right?

A. Or thinking the CIA is out to get you or what have you, yes.

Q. Sure. And the same thing could be said for his other delusion, about living outside the prison walls? It would certainly be a much more pleasant way to spend your day --

A. Certainly.

Q. -- daydreaming about working as a pipefitter?

A. Certainly.

Q. Okay. Does the concept -- the question originally was why does he meekly accept prison, and your response was, you can't use rational thought to understand an irrational thought process. But doesn't that just preclude any review whatsoever of any hypothesis about whether or not he is malingering, whether or nor he's schizophrenic?

A. I mean, obviously one can't overly generalize that position, because you're right. If I were to stand on that position alone, then we could never speculate on anything. But the point still has merit. And we interpret pathological phenomenon within a normal context, and that's fine. That's how we determine it's pathological. But the minute we try to

get inside the head or the motivations of the person with the pathology, that becomes a very slippery slope.

Q. If he meekly accepts prison, doesn't that kind of undo the idea that he would be acting in concert with his delusions? I mean, if he has a delusion that he is working as a welder, why isn't he standing at the wall with his toothbrush and welding the gap in the wall between the bricks?

A. I think part of the issue is that one doesn't typically act out -- actively act out their delusions or hallucinations. I don't think they -- I don't think they're necessarily going to be actively engaged in that behavior. But, yes, the issue of why he isn't jumping up and down and raising more of a concern about it, I don't have a great answer for that. On the other hand, how do you do that over 20 years?

Q. What do you -- how do you deal with that time period of transition maybe at the start of the day or at the end of the day or whenever it happens, where he finds himself snatched from his kitchen table and deposited, surely that time period has to be one of great disorganization and confusion?

A. One would assume so. It's really difficult for me to know, in interviewing him and looking through the record, is whether it's like that, as if I'm sitting here and then suddenly I experience myself to be somewhere else or whether it's more like he wakes up and realizes that he's in prison and thinks, again, not because he was dreaming, as I understand it, but

thinks, well, how did I get back to this place? So, I don't think how the logistics of that presumably work. But, yeah, it would seem like he would be disoriented.

Q. We've talked about schizophrenia being a waxing and waning illness, but doesn't it progressively get worse over time?

A. It does tend to get worse over time, particularly without treatment, yes. I know of no research to suggest that it simply goes into remission and abates.

Q. Okay. Kind of like when we were discussing earlier about the delusional disorder, it doesn't usually just disappear on its own?

A. Right.

Q. Back to talking about that actual report of his delusion, about being at home and then suddenly moving to the prison, you had said that it's not a combination of hallucinations, like a tactile hallucination, a visual, and an audio, because it's really just a delusion. It's not an event that happens for him. It is a belief that this is how he's living?

A. I don't think that he is having, as I understand it, that he is having a perceptual phenomenon as he sits within that room. I believe that it is, if you will, a fantasy in his head, as it were.

Q. If it was a perceptual phenomenon, if you take him at his word and he's describing suddenly being dragged or pulled, I think are the verbs that he's used, that would be a combination

hallucination of tactile and visual events?
A. The tactile would come in if he literally is reporting feeling being dragged. You know, I can feel them squeezing my arms or something. Because, again, if the sensory receptors aren't activated, one presumably could deal with the idea of being dragged because they see it or they've heard something about it, but you would actually have to talk about the feeling. When people talk about tactile hallucinations, they report physical sensations in their body.
Q. And, so, tell me what it would sound like if he was describing the physical sensation in his body of that change in location against his will?
A. For example, he might say something like, you know, and, you know, they squeeze me so tight or, you know, I try to pull away and they just, you know, they squeeze harder or, you know, they're leaving bruises or something like this, that would suggest that he is aware of activation of sensory receptors.
Q. They're leaving bruises, wouldn't that be more of a visual hallucination?
A. Well, presumably one wouldn't actually see some sort of a bruise there. It would be more of an idea that he was recognizing that there was some pain associated with it. It could be visual, absolutely. The idea that here, look, see my bruise and there is no bruise, it could be. But I'm trying to respond to your question about how he might experience it.

Q. If he was experiencing it as being dragged or pulled and seeing it and hearing it, that would be a very unusual combination of hallucinations?
A. Exceedingly unusual and potentially unheard of.
Q. Okay. And that would be very suspicious of malingering?
A. Extremely suspicious because of it being a rare symptom combination.
Q. What does Mr. Eldridge's getting access to cocaine while he is on death row, if that, in fact, is what the records indicate, tell you about his understanding of the constraints on his environment and his ability to, quote, "accurately perceive, interpret, and/or respond appropriately to his environment"?
A. I'm not sure I understand the question with regard to him getting cocaine, if that's what occurred.
Q. Tell me if you agree with this: If he is able to get an illegal drug that's illegal outside of the prison system and certainly difficult to get, one would hope, inside death row, if he is able to negotiate whatever economic transaction as well as security transaction, keeping it away from the guards that are going to report you, finding which guard will sell it or which inmate and actually conducting the physical exchange without getting caught, what does that combination of things tell you about his understanding of where he is and what is his environment?

A. So, we're speaking of a hypothetical, I trust?
Q. Yeah.
A. Sure. So, again, people who are crazy aren't crazy 24/7, but, indeed, that would be a very suspicious thing. It would suggest a much better ability to navigate the social and physical environment and consider all sorts of things that we would typically apply to somebody with a severe psychotic disorder. That would be highly suspicious behavior.
Q. I don't know that we've ever really said this. You've said that a person's active psychotic episode can last for a very wide-ranging amount of time. Can you tell me again, like, for example, what is the shortest active psychotic episode?
A. Well, we recognize that in conditions, like, brief psychotic disorders, for example, that one can have a psychotic episode that typically can last a matter of days. We know that in people who are diagnosed with schizophrenia -- for example, people I've treated in my own outpatient office, which might be some of the more briefer experiences, it may literally be something that's occurred over the space of a number of seconds. They may appear to be attending to internal stimuli, as we describe it. And you say to them, you know, "What's going on" or, "What just happened," and they may do a double take or a momentary pause and say "nothing" or they might say, "I was talking to Fred," or whatever they might say about it.
Q. So, the actual active psychotic episode is basically

defined by the length of time that the voice is speaking in that example, Fred, whatever?

A. Well, and, again, I'm assuming it's based on what I've understood you to be saying in your questioning of me, in terms of why are they not reporting more bizarre disorganized nonintact behaviors with him. And, yes, in that context, I would say that's active.

If you look at it from a diagnostic period, they may have several weeks during which they're having active symptoms. They may have hour after hour after hour and more severe presentations of hallucinations. But it's also conceivable that they're having, you know, a few episodes every hour, they're lasting an hour, and they're not having them during certain hours. They can certainly be a lot more inconsistent depending on the particular presentation. It's really quite heterogeneous depending on the type and the severity of the symptomatology.

Q. And how long would you say the longest reasonable -- and I understand it's not going to be an exact number, but --

A. Right.

Q. -- the longest reasonably determined and genuine hallucination would last?

A. Right. And, again, you know, I don't know for sure and, of course, since when we see that, people are usually getting medicated or whatever. I think that a person might be having a

fairly active, fairly ongoing much more out of touch than in touch maybe for a couple of weeks.

Q. Okay. So, you're talking that the hallucination lasts a couple of weeks?

A. A hallucination won't last that long, but the entire constellation of disorganization and they may not be seeing or hearing anything at that time, but they're certainly not conducting affairs well and they're not necessarily taking care of activities of daily living well, they're having trouble negotiating their daily routines, that could last over the space of a longer period of time.

Q. Okay. Then I'm not being clear. What would you say is the longest reasonable length that a genuine hallucination would last?

A. In that case, if I'm understanding that question, I would say probably a matter of some hours.

Q. Okay. So, someone could hallucinate for a couple of hours at a stretch?

A. And I think that would be an outside measure, for a continuous hallucination over a space of some hours.

Q. Okay. I have a couple of questions for you about the specific things you did in your evaluation of Mr. Eldridge for your first report. In your first report you mentioned in the list of tests that you administered or the measures that you administered the SIRS-2?

A. Yes.
Q. Did you -- you never report the results of the SIRS-2 in your first report.
A. I did not.
Q. Did you consider the results unimportant?
A. No, I considered the results important. One of the reasons that I didn't include the SIRS-2 initially was because of some of the concerns that I had raised about some of the language and I wasn't sure whether I should put a lot of stock in the results. I will point out that the results were not consistent with malingering. And I thought that in being balanced, since I had some concerns about the validity of the measure for him, I reported it so that it was known that I gave it. It didn't make sense to spend a lot of time discussing a measure that I thought was invalid.
Q. Okay. You didn't measure his effort with any formal test; is that right?
A. You mean in terms of cognitive?
Q. No. I'm just talking about effort.
A. We measure effort all the time with every measure we give neuropsychologically.
Q. Okay. But you didn't administer a specific test that itself was designed to measure effort?
A. Are you talking about a test of malingering that looks at cognitive effort, is that what you're saying?

Q. If that's how you're interpreting a test of effort, then, yes.
A. Okay. No, I did not.
Q. Okay. You did subjectively assess his effort by saying that he appeared to give his best effort and you believe that the results are accurate?
A. But it's more than that. I did say that, yes.
Q. Does that kind of assessment of effort give you an accurate result, a subjective assessment, a visual, he looks like he's trying, he seems like he's trying? Does that give you --
A. No. No, that's not sufficient for guaranteeing adequate effort or honest effort.
Q. Okay. Have you ever administered a formal assessment of effort prior to this?
A. There have been some occasions where I have, yes.
Q. About how many times would you say you've administered a formal assessment of effort?
A. Probably not more than half a dozen where I've relied on a formal effort assessment.
Q. Okay.
A. I'm not fond of formal effort assessments.
Q. Okay. When you administer a formal assessment of effort, what do you use? What do you think is up to the task of assessing effort?
A. Well, obviously there are some things currently that are

much more up to the task. Most of the things that I've done were quite some time ago and they involve things like the Rey 15-Item, which is not a good measure by any means. Certainly measures like the Test of Memory Malingering is a well-respected measure. A measure like the Victoria Symptom Validity Test is a potentially respective measure.

Q. Are you taking that the Victoria Symptom Validity Test is a test of effort?

A. No, it's not a test of effort. I'm sorry.

Q. Okay. So, I just want to talk about tests of effort.

A. All right. Things like the Word Memory Test would be a measure that could be a test of effort.

Q. And have you ever used the Word Memory Test?

A. I have not.

Q. Do you use a test of effort currently? I know you said that in the past, a long time ago you had used a test of effort, but --

A. So, the neuropsychological literature has -- and I think even in Rogers' book, talks about ways of using neuropsychological test measures in order to look at aspects of effort. And this is a technology that is rather more applied to neuropsychological measures than I've seen for any other types of general cognitive measures.

Q. So, you were relying on the -- what you believe to be the effort scales or -- I might not be using the word correctly,

but --
A. In essence, yes.
Q. The tests that you had administered in your battery contained effort measures?
A. There are ways of interpreting the results in terms of looking at whether there is a reason to suspect that you would have to look in more detail at whether effort was an issue, yes.
Q. And which of the measures that you administered are discussed in the literature and evaluated or assessed, whatever word you want to use, for their accuracy in assessing effort in a forensic context?
A. Again, we're talking about the effort thing on the cognitive side?
Q. We're talking about the tests that you administered to Mr. Eldridge in your first report.
A. So, there -- often these things are things that are done in combination, looking at different types of processes. But one thing that's discussed in the literature is repetitive response in the Wisconsin Car Sorting Test. There is some specific literature speaking to that.
Q. Literature speaking to the patterns of answers on that test --
A. Yes.
Q. -- in a forensic setting?

A. Yes.
Q. What is the rate of sensitivity for the pattern that you're discussing in the Wisconsin Card Sorting Test?
A. Again, as I point to, the issue has to do with the question much like with a screening measure, it has to do with the idea of whether a red flag is seen and then looking at -- looking in more detail to see whether there is evidence that there was an effort-related issue, whether somebody is feigning or malingering.

I am not aware of there being a specific specificity, sensitivity, or hit rate that's discussed within --
Q. For the Wisconsin --
A. -- within any of this particular -- any of these methodologies. They don't come up with a cut score. It doesn't use those types of techniques. It is a different type of measure for determining response set.
Q. Okay. The first time that you visited with Mr. Eldridge, your report -- your first report mentions that Mr. Wilson came with you to assist with rapport building?
A. Yes.
Q. And he stayed for some portions of your first meeting together?
A. Yes, he did.
Q. About how long was he there with you?

A. I don't remember what I said about how long my first meeting was.
Q. And I'm sorry, I don't either. I believe on page 7 in your third paragraph --
A. I think that's exactly right.
Q. -- it says you were there for two and a half hours?
A. Right.
Q. About how long was Mr. Wilson there for?
A. So, of that two and a half hours -- and I don't remember if he left the prison or not. He may have. But I would say that he was probably there for maybe 45 minutes initially and then he stepped away and I brought him back at another portion of the interview.
Q. And about how long for the second portion do you think he was there?
A. As best as I recall, he was probably sitting there for about 30 minutes, maybe 20 minutes. Again, my interaction was primarily almost exclusively with Mr. Eldridge, but occasionally I used that as an opportunity to engage with Mr. Wilson in terms of maintaining rapport and getting some information.
Q. And to your understanding, Mr. Wilson has been on Mr. Eldridge's case for many years and they have, I don't know if you want to call it a friendship, but they have established a comfortable, trusting relationship?

A. Yes. I don't know what to call it either, but, yes, I think that's a good characterization.
Q. Okay. And, so, you would agree with me that this might be the only time that Mr. Eldridge has had someone with whom he has that kind of comfortable, trusting relationship introduce him to a psychological professional and spend that kind of time encouraging that kind of rapport?
A. I don't know if it's the only time or not.
Q. Okay. To your knowledge, there hasn't been that kind of interaction, for example, with any of the psychologists in TDCJ?
A. Certainly not to my knowledge, no.
Q. Okay. You're aware -- obviously you're aware that rapport is important. Are you aware of any ethical standards that talk about things that outside parties can do to influence the rapport in a negative way? For example, are there any standards for psychologists saying, "Don't poison the well for the next psychologist that comes along," or anything like that? I'm not saying that you did.
A. Right. Sure, there are. And, you know, when it comes to evaluations in particular, we look at that with regard to test data and particular test measures, but it is something we want to be sensitive to. And, for example, having another individual present during test administration, which sometimes will occur, but it's something that is generally frowned upon

and we attempt to not do that.

Q. Sure. I would like to show you Respondent's Exhibit 47, page 291, which is a letter from Mr. Eldridge dated June 6th, 2011. And I'm sorry, when I was pulling this document out of my binders, I didn't pull the first page of the letter. So, I don't know who this letter is to.

But do you recall the letter says, "The officers came to my cell and asked me did I want a legal visit. I'm going to see Mr. Lee, but it is not Mr. Lee. I see two women attorney today 6-6-11 from Texas Defender Service outside of Houston. They talked to me about my case and told me the doctor who worked for the State of Texas sent in his paperwork on me. The paperwork was very bad and in all, he said the State of Texas can go ahead and kill me. This is the same doctor who do not like me and he had some bad things to said about my family. He do not know my family and my family have not did anything to this doctor. I will see Mr. Lee soon, and I think I have to see a doctor again for my attorney."

You're familiar with that letter?

A. I am familiar with that letter, yes.

Q. Okay. You can understand why getting news like that from your attorneys, that a particular doctor has gone ahead and said, "Go ahead and kill this person," can be exceptionally damaging to any possible rapport that that doctor might have with Mr. Eldridge again?

A. Indeed, if that is something that is said, of course, that would have damaging rapport.
Q. Sure. And, of course, we're not for sure that this letter is accurate, right? Mr. Eldridge could be deluded about this event?
A. Or lying or misunderstanding or any of a host of things, certainly.
Q. Right. But based on what we see here, there obviously was some kind of interaction that may have negatively affected his willingness and, in fact, did negatively affect his willingness to ever speak to that doctor again, right?
A. There certainly is a concern sometime between these people appearing and his belief that the attorney for the -- I'm sorry, the psychologist for the State is not friendly to his cause, yes.
Q. And then he refused to see Dr. Allen?
A. That is my understanding, yes, indeed.
Q. Okay.
A. Indeed, as I think you know, he made several comments during my second evaluation regarding the visit and things that he thought did or didn't happen.
Q. I'm sorry. You're talking about whether or not Dr. Allen read --
A. Right, comments that he made about Dr. Allen either did or didn't do or said or didn't say and obviously one doesn't

respond to those things, because you don't want to poison the well, exactly as you say --
Q. Okay.
A. -- you know.
Q. Right. Because that would be inappropriate?
A. It would be totally inappropriate.
Q. Of course. And I didn't mean to imply --
A. And nor did you.
Q. Okay. When you decided to do your limit testing on the SIMS and the M-FAST that were administered, I believe you said that you tried to ask the SIMS questions or the M-FAST questions with exactly the same wording. So, did you have the word -- the questions written out?
A. I did. I did this before -- in fact, even before leaving for my trip to -- yes, I saw him at Polunsky that last time, because I wanted to be as comprehensive, objective, but also aboveboard with him as possible.
Q. And I believe you said that if it appeared that he didn't understand the question only then would you rephrase or reword it to try to get him to understand; is that right?
A. Right. And, again, it wasn't necessarily that I was looking to explore the question. I wanted to explore whether a change in wording would make a difference.
Q. Okay. So, and I know we don't want to recite the entire question, but can you look at your notes or at your report or

whatever document would have this --
A. Sure.
Q. -- and tell us what term or terms that Mr. Eldridge failed to understand.
A. I'm happy to do that. I will tell you, it will take a bit, because as I said, this was in the context of an interview, so these things are truly embedded within and there are several pages.
Q. If you will tell me where you're looking --
A. Sure. It is Petitioner's 5. The notes actually begin on page 131, but the substantive portions of it are pages 134 through 152.
Q. Did you circle the words that he didn't understand or --
A. I didn't.
Q. -- just rewrote the question as you rephrased it or --
A. Well, to some degree it depends. I mean, what I did is I wrote out the questions in advance and then would fill in answers as we went through. And as much possible -- I mean, obviously writing and trying to keep up with what he said verbatim could be difficult, but as much as possible, I attempted to give his response verbatim. So, in a couple of cases I might add something or I might have left out a question that was initially on there, because it was no longer relevant. So, I literally have to look through all of these notes to give you the specific answer to those words.

Q. I think that that might take a little while, so I'm not going to ask you to do that right now.
A. One example I can give, that it came up again yesterday, was the idea of vision versus visual hallucination, that that was an example --
Q. Okay.
A. -- of something that was difficult. I think you know from my testimony yesterday, that another thing that I'm worried about is -- I'm sorry, it's on the SIRS. I'm drawing a total blank.
Q. Unbearable?
A. Unbearable. Thank you very much. I don't know why I couldn't think of that word at this point in time, as I'm undergoing cross-examination.
Q. I would like to talk to you a little bit about your reliance on the SIRS-2. Are you familiar with the norming studies that were done supporting the SIRS-2?
A. Yes. I'm not sure that I could quote them off the top of my head, but, yes, I've --
Q. All right. Are you -- have you ever looked at the data supporting the SIRS-2?
A. Yes.
Q. Okay. Are you familiar with an article by a gentleman named Gregory Declue? He's a Ph.D. out of Sarasota, Florida, and he wrote this article that's on the screen right now,

"Harry Potter and the Structured Interview of Reported Symptoms" in the *Open Access Journal of Forensic Psychology*?

A. I do not know this article, but it sounds like a wonderful title.

Q. So, I'm going to read some things from this article and ask you if you knew of these arguments.

"Although prominent researchers generously made SIRS data available for this SIRS-2 professional manual" -- and then he's quoting Rogers -- "the test publisher has refused to allow analysis of the data by independent professionals citing trade secrets."

And then I move down. "Prospective users of the SIRS-2 might wish to know for the same sample how the SIRS-2 compares to the original SIRS regarding accuracy of distinguishing between feigned versus genuine response patterns and then regarding the number of protocols classified versus deemed indeterminate. That information is being withheld from the public. Unfortunately the SIRS-2 author's and publisher's decision to hold data proprietary makes testimony based on the SIRS-2 vulnerable to being ruled inadmissible in court. That problem could be remedied easily and promptly."

Were you aware of this argument against the SIRS-2?

A. I understand that there have been concerns about the fact that in the revision that disclosure may not have been as

complete as certainly it is for most measures, yes.
Q. I mean, it sounds like disclosure has not happened because it's deemed proprietary data?
A. Right, which is always troubling. Test publishers very commonly will provide their data sets.
Q. So, basically there has been no peer review of the claims to sensitivity and specificity made on behalf of the SIRS-2 because the data hasn't been retested independently?
A. Well, at least not on the original data set, yes. I mean, there's certainly -- it hasn't been out all that long, but there has been studies using the SIRS-2. But, yes, indeed, in terms of being able to reanalyze that original data, this is my understanding, that as we speak, that hasn't been released.
Q. Okay. Well, not only has the data not been released, but the studies that Rogers uses and that Pars, the publisher, uses --
A. Right.
Q. -- to support using the SIRS-2, that data hasn't been checked by anybody else?
A. Right, exactly. Yes.
Q. Okay. And if you can't cross validate or peer review something, that's a problem in your profession, right?
A. As you know, the manual includes information about those findings, but, yes, it is typically the case that test publishers will make that available in order for additional

analysis to be made and so forth.
Q. You mentioned that the SIRS-2, it's obviously a revision from the SIRS-1.
A. Yes.
Q. The SIRS-1 was based on a group of subjects, most of whom came from a hospital, a private mental health hospital in the Dallas area, right? And the SIRS was having complaints -- or there were complaints made about the SIRS not having accurate sensitivity and specificity in certain contexts?
A. Yes.
Q. And, so, the publishers and Rogers decided to add new data to the old data and basically retabulate it; is that right?
A. As I understand the process, yes.
Q. And part of the complaint that a lot of people in your profession have with the SIRS-2, is that now instead of having a certain number of known malingerers out of a data set, you have that number out of a much greater data set?
A. In a combined data set.
Q. In a combined data set. There were only, I think, 36 malingerers out of a total data set of 520 people; is that right?
A. I don't recall those numbers offhand.
Q. Okay. So, that didn't seem to bother you in your choice of the SIRS-2 in this context?
A. Well, one of the issues that you run into is that the

SIRS-2 is the type of measure that allows for a more direct structured interview approach for being able to elicit data. As you know, I had some other issues with the SIRS-2; and as you've already pointed to, in my first report, I indicated that I gave it, but I did not rely on it. It's not something I discussed. I had a number of issues with the SIRS-2.

Q. So, I guess what my question is, your issues with the SIRS-2 were not related to it as an instrument, they were related to wondering whether Mr. Eldridge performed accurately on it in a way that revealed something about him?

A. Right. And those were my initial concerns about it, yes, and the initial reason that I didn't include it.

Q. And my question is, should you have used this at all to begin with, because it has some other significant problems?

A. I understand. Right. And I was not aware of the concerns that we've just discussed at the time that I had initially purchased the SIRS-2 and at the time I had initially seen him.

Q. When did you purchase the SIRS-2 in relationship to this case? Was it before -- right before this case started?

A. It was not long before, yes.

Q. Okay. And how many people have you used the SIRS-2 on?

A. I have not used the SIRS-2 since that initial administration.

Q. So, when you used it on Mr. Eldridge, it was the first time you had administered it?

A. The first time that I had administered the SIRS-2; that is correct.
Q. I hope you didn't pay a lot of money for it.
A. I hope I didn't pay a lot of money for it as well. But I always hope I don't pay a lot of money for things.
Q. Did you see anything in Dr. Allen's report to indicate that he was using the M-FAST or the SIMS or the TOMM as a definitive, I'm hanging my hat on this test and this score alone, or instead did you see them as data points that he considered?
A. No, I saw them as data points that he considered.
Q. And, so, do you feel that that is an appropriate use of screening tests and things like that?
A. In terms of the way that he presented and administered and interpreted those results, I felt that that was reasonably portrayed.
Q. But I understand that you think that Mr. Eldridge's language difficulties are a primary problem with basically administering any kind of testing, testing that isn't drawing or mathematical in nature; is that right?
A. That language-based concern could potentially invalidate the understanding of some of those measures, yes.
Q. If language is a problem for Mr. Eldridge, how can we ever use anything that he says, take it at face value as data?
A. Well, there are a lot of measures that we can give where

either language is not going to be a fundamental issue or where you have the latitude to be able to translate or change the wording.

Q. Okay. I'm not talking about administration of an assessment device.

A. Okay.

Q. I'm just talking about if language for Eldridge is such a problem, how can we ever use the things that he says, the things that -- the things that he has said as data? How can we rely on or take it at face value what he says?

A. Well, one could always question whether we can take something somebody says at face value, but I think in terms of his language ability, his expressive availability may not be great, but it certainly is adequate for being able to function and pragmatically get his points across. He also understands and comprehends people talking with him. The issue has to do more with his ability to deal with vocabulary, larger words, is where I draw the distinction.

Q. Well, but yesterday you talked about a situation in which you decided to interpret his words differently than how he said them. He said something like I have -- I hear voices all the time, and you decided that in that context, all the time must mean the same thing as I got whoopins all the time. Now, logically we know his parents were not beating him 24 hours a day, 7 days a week all his life. So, we know that all the time

is an exaggeration. It means frequently, as you said, correct?
A. I believe that's right, yes.
Q. And you decided, based on a number of examples that you gave, that when Eldridge reports hearing voices all the time, he has to mean frequently and not all the time?
A. I don't know if he has to mean that. I take it that that's what he means, that he does not continually hear voices, nor is that what the records suggests.
Q. And you take it that way, because if he meant it genuinely, that he -- if he really did say, "I hear voices all the time" and meant to communicate that he is always hearing voices, that would be completely ridiculous given --
A. Yes, that's a blatant overreported symptom. That would be very ridiculous.
Q. Okay. And that would be inconsistent with what you see the records revealing?
A. And even with sitting with him for a few minutes and interacting would be inconsistent, yes.
Q. Okay.
THE COURT: Is this a good time to see where we are?
MS. ODEN: Yes, Your Honor.
THE COURT: Where are we?
MS. ODEN: I probably have another half an hour of questions. The last section that needs to be addressed is the rational understanding, and that's it. Do you have any

estimate as to the length of your redirect?

MS. FERRY: I mean, I'm working here with sort of scribbled notes, but I actually don't anticipate that it will be terribly long. I think --

THE COURT: Can you be a little more precise?

MS. FERRY: Well, let's say I'm thinking probably an hour to hour and a half is my guess. I mean, relatively long obviously was relative. But that's what I'm guessing, about an hour to an hour and a half.

THE COURT: Let's take about five to ten minutes. I would really like to finish your examination of Dr. Roman. I'm afraid that if we start fresh in the morning --

MS. ODEN: It will go longer.

THE COURT: Yeah, exactly. And I do want to find out a little bit more about -- were you able to confer about scheduling?

MS. FERRY: We were. And May 20 and 21 is available for all the parties.

MS. ODEN: I believe May 20th is a Sunday.

MS. FERRY: I'm sorry. 20th would be the travel day. So, the 21st and 22nd. You're exactly right.

THE COURT: Okay. I've got bad news. I'm not available. So, let's try it again. How about the 29th, the following week, the 29th and 30th?

MS. ODEN: That's fine with us.

MR. WIERCIOCH: Is that the Memorial Day weekend, Your Honor?

THE COURT: It's the Tuesday afternoon.

MR. WIERCIOCH: Okay. I'm just anticipating flights may be difficult at that time. I don't know. I'm just saying.

THE COURT: They might be.

MS. ODEN: And, Your Honor, I'm not trying to be difficult, but my only concern is that the longer that we wait, the more there may be any concern on the part of the petitioner that the data on his mental status is stale.

THE COURT: I appreciate the problem. But check on the flights, that's the best I can --

MR. WIERCIOCH: Okay, Your Honor.

THE COURT: -- to accommodate your travel needs, that's the best I can do. If the week of April 30 is not going to work, that would be the alternative.

MS. FERRY: So, May 29th.

THE COURT: All right. Very good. Okay. Thank you very much. We'll resume in about ten minutes.

(Recess from 5:54 p.m. to 6:04 p.m.)

THE COURT: All right. Are we ready?

MS. ODEN: Yes, ma'am.

THE COURT: Be seated.

Go ahead.

CROSS-EXAMINATION

BY MS. ODEN
Q. Part of the problem that you believe with Mr. Eldridge taking the SIMS is that if he took -- if he read the test himself or if one expects him to have read the test himself, his reading level is below fifth grade and so he can't be expected to have taken the test validly?
A. Correct.
Q. But you know from looking through the records, at least through reading the testimony at the Atkins hearing, that his reading level was actually measured at least 5.6 grade level, that was Dr. Hughes's report and the TDCJ records that were introduced at that hearing and were represented in that transcript. Do you remember that, right?
A. I've seen those records, yes.
Q. Okay. And you know Dr. Hughes testified that as a pipefitter's helper, he had to have a passive vocabulary of something like five to 6,000 words, based on the Department of Labor's dictionary of occupational titles?
A. Yes.
Q. You remember that. And do you remember that even Dr. Averill in her testing said that he had at least a sixth grade reading level?
A. Actually I don't recall that.
Q. Okay. So, if I told you that she testified to that effect on June 25th, 2007, page 130 and June 28, 2007, page 881, if

you wanted to or if we wanted to, we could go back and see that that was her testimony?
A. Yes. I didn't disbelieve you. I just did not recall that.
Q. Okay. So, do you disbelieve Dr. Averill then?
A. No, I don't disbelieve Dr. Averill.
Q. Okay. So, at least we know he has a sixth grade reading level and that should be enough?
A. No, I disagree.
Q. Okay.
A. That's not the standard.
Q. But I thought you said that you had to have a fifth grade reading level to do the SIMS?
A. The standard for evaluating an individual's reading level, for better or worse, is based on their reading decoding and we have multiple measures of reading decoding using, for example, the Wide Range Achievement Test that scored him at a much lower reading level.
Q. And those test results are not valid, because we don't know that he was exerting full effort when he did the test, right?
A. It is a possibility that they could lack validity, but it is still the standard that is used within the profession for determining reading level.
Q. Okay. So, if other psychologists said that he read at an eighth grade level or a sixth grade level based on their evaluations, we would discount that because we have to look at

the WRAT score?
A. No, it would depend on your measure of course. We have to look at a naturally normed standardized measure of word recognition.
Q. Okay. So, the fact that he was reading the newspaper, which according to Dr. Averill is written at at least a sixth grade level, and was actually reading it, doesn't really matter, because he could have been faking reading it?
A. I guess it's possible he could have been faking reading it. But, no, of course, those kinds of things matter. If he is actually reading the newspaper, that would be a data point.
Q. Okay. All right. So, we've talked a little bit about data points and vectors and evaluating consistency of evidence. What criteria did you apply, if any, to evaluate these data points in terms of malingering? Are there criteria that you use to determine if someone is malingering?
A. Sure.
Q. And what criteria are those?
A. Well, there's a number of different criteria that have been used overall. Obviously in addition to the evaluation that I conducted, I've had the opportunity of looking at the records and have had the opportunity of looking at Dr. Allen's reports and his own evaluations. So, there is a wide range of information that's been available in the final analysis.
Q. But I'm talking about a criteria that tells you how to

interpret the data.
A. The criteria in terms of how to interpret the data deals with a number of these factors we've talked about. Consistency, the question of whether the results appear to be believable, the question of whether the weight of the data suggests that there is validity to the symptoms and complaints that are reported.
Q. Do you apply Dr. Phillip Resnick's criteria on malingering?
A. I do not necessarily specifically apply.
Q. But you recognize that Dr. Phillip Resnick and his criteria on malingering is pretty much the profession's gold standard?
A. Very well respected.
Q. And for reference, that criteria appears on page 64 of that book?
A. Yes.
Q. But you did not apply this particular set of criteria?
A. Well, in terms of the idea of this being a general set of criteria that applies, I mean, I wouldn't say that I didn't apply it here. If you're saying did I specifically apply that as my basis for interpreting the entire data set, no, I would not say that I specifically applied that.
Q. Okay. Okay. Your diagnosis in your first report was that Mr. Eldridge has on Axis I, paranoid schizophrenia?
A. Yes.
Q. And, so, can we determine when that paranoid schizophrenia

began, when is the earliest time that he can be diagnosed as a paranoid schizophrenic?
A. Well, again, based on the existing documents, as we discussed, in terms of looking at it at a point where I can say with a reasonable degree of certainty based on the totality of the results, I would put it back, understanding it may be earlier, I would put it back to some period in 2009, the point at which at a minimum there is also corroboration from the people who work with him on a daily basis and are treating him, that they saw sufficient evidence to warrant the diagnosis and treatment.
Q. Okay.
A. I think there's evidence before that, but that's the comfortable point to make the determination.
Q. So, you think there's evidence before that, but you testified earlier when we did that little chart that --
A. Right.
Q. -- you were comfortable diagnosing him in 2009 and not before?
A. Yes, that's accurate, absolutely.
Q. Okay. You also on Axis I diagnose him with a collection of reading and written expression disorders. They aren't really relevant to his competency per se?
A. No, I would agree with, that they are not directly relevant to his competency.

Q. Okay. In your first report you diagnose him as having no diagnosis on Axis II?
A. That's correct.
Q. And that is where in your second report, you give him a diagnosis of antisocial personality?
A. Yes, which should have also appeared in the first report.
Q. Why did you omit that diagnosis in your first report?
A. Two primary reasons. In part, it was an oversight and when I realized it, I corrected it. But the other thing is actually relatively consistent with the testimony we've already heard. It isn't directly related to the question that was at hand, and in terms of independently evaluating whether he met the criteria for antisocial personality disorder, I didn't really consider that. Given the fact that he's an offender on death row, it seems like a no-brainer that he has antisocial personality disorder features, and I should have included it. It just did not even occur to me.

Frankly, my template that I use lists no diagnosis on Axis II, because that's what's normally assigned to most people; and, frankly, I never changed it in the template as I wrote it. I just did not think to make that addition. Obviously an oversight on my part.

Q. The fact that he has antisocial personality disorder was not something in the forefront of your mind as you considered the data and weighed it in this case?

A. It was not in the forefront of my mind for diagnostic consideration.
Q. Okay.
A. I certainly agree and assume that he has an antisocial personality disorder.
Q. And would it be fair to say that even though you changed your second report to include that diagnosis, it's still not in the forefront of your mind as you sift through the data and evaluate your opinion?
A. Well, it has some relevance to the opinion, but in terms of looking at it in terms of the final determination for this Court, no, it's not in the forefront of my mind.
Q. Okay. I want to talk about -- so, we've talked about the first prong of competency for execution, which is whether or not he has schizophrenia?
A. Yes.
Q. And the second and third prong, whether it prevents him from interfacing with reality and prevents him from connecting the reason for crime and punishment, once again, I understand that we can't really be inside his head, so we have to look at his actions and his words and to some extent our understanding of any biological or medical conditions that he has. You know, if someone's deaf, you know that they can't hear you, so you know that it's not getting in?
A. Yes.

Q. Okay. But you do concede that he is aware that he is in prison for shooting and killing Cynthia?
A. I concede that he has awareness he's in prison. I concede that he has an awareness that they tell him, as he says over and over again, that this is why he's here. So, he recognizes it. I don't know for certain that it's an awareness, an independent awareness that he has.
Q. He has a factual awareness, you said, based on -- because of your personal evaluation with him -- sorry, your personal assessment, some of his pen pal letters, and the medical records, all those things together do reflect that he has this factual awareness?
A. Awareness of what exactly?
Q. Awareness that he is in prison --
A. Yes.
Q. -- because of the capital murder conviction?
A. Yes, I have no reason to dispute that.
Q. Okay. But you believe he does not have a rational understanding of these facts, because when you asked him -- for example, asked him about his trial, he seemed to have no recollection of it? He told you that he didn't remember that?
A. He did say that, yes.
Q. Okay. He agreed with you that he must have had a trial?
A. Yes, he did.
Q. Because that's what made sense, because he's in prison?

A. That's correct.
Q. He seemed confused, but he explicitly told you that it does make sense?
A. Yes, he did.
Q. So, I want to go through just a couple of his letters with you that seem to me to talk about his awareness of the situation. And, again, what he says doesn't necessarily correspond to what he thinks, but it's some window in there, right?
A. Yes.
Q. So, I'm showing you -- first of all, do you remember we just looked at a letter in which he said something like, "I do time. I don't let time do me"?
A. I recall that, yes.
Q. Okay. In your forensic experience, have you had much occasion to read much prisoner mail or is this the first time?
A. No, I've actually read a significant amount of prisoner mail.
Q. So, have you heard phrases kind of like, "I do time. I don't let time do me," that kind of verbiage before?
A. Things to that effect, yes.
Q. Okay. I'm looking at Respondent's Exhibit 27. This is page 34, just to show that this is a letter from Gerald to Sophie. And page 36 is dated --
THE COURT: Is this petitioner's exhibit?

MS. ODEN: No, I'm sorry. This is respondent's exhibit, Your Honor.

THE COURT: Okay. Thank you.

MS. ODEN: Respondent's Exhibit 27.

BY MS. ODEN

Q. So, this is page 36, and the letter is dated April 21st, 2010. I'm going to read from this and it's not -- I don't think I'm just reading the highlighted part. Maybe I am.

"I will get with my lawyer and see what I can do on my end with the money to help us get ready for court. Sophie asks can I receive photos. Yes, I can receive photos. This unit is not like that hellhole Polunsky unit."

So, obviously while he's writing this, he's in Jester?

A. Yes.

Q. And then I am going to skip down. "Inmate Riles is in the cell next from me" -- I'm sorry -- "he's in the next cell from me. He have been going through hell here on death row for 36 years now. 36 years is a long time, and my lawyer is trying to ask the courts now what to do with me and not years go by."

You're familiar with that letter, right?

A. I am familiar with that letter.

Q. Okay. The next letter that I want to look at is Respondent's Exhibit 33, and it starts on page 164. And this

is a letter that Gerald writes to Barry Eldridge, to Mattie. That's his mother.

A. Yes.

Q. Page 165. It's very short. It's dated 11-11-10. It's cut off at the top, but it says, "Mom, you're not on my inmate visiting list. You need to give me your address and you needs a photo ID. I have your address at Andrea and Dewberry."

And I flip it over, this is page 166, at the top it says, "For your birthday I like to send you a little poem that I have found for you. From Gerald with a big hug." The poem is titled "Always Have a Dream." And at the end, he writes, "I have a dream to come home and give my lovely mother a hug. Happy birthday a lot more."

Doesn't that seem strange to send your mother a card if you think that you are at home, to tell her that you're dreaming or have a dream about coming home?

A. Well, the dream part certainly comes off the title of the poem that he's ostensibly selected to send to her.

Q. Sure.

A. I certainly agree that it's a concerning thing and short of the double bookkeeping concept, which we've described, it's a difficult thing to understand, if we presume that this is a legitimate characterization that both things are true.

Q. Okay. So, we would have to assume that this card was written when he was in the part of bookkeeping that had him

living on death row?
A. By definition we would have to make that assumption.
Q. Okay.
A. Or the assumption you were attempting to make.
Q. I'm looking at Respondent's Exhibit 34, page 189 and 190. It's a letter to Beatrice, dated January 4th, 2011. And like you said, most of his letters start with, "Inmates J.W. and others help spelled words throughout this letter"?
A. Yes.
Q. J.W. is probably Jeff Wood?
A. I believe it probably is.
Q. So, it's a long letter, but I did -- "I was not able to get writing stuff, because I was heavily medicated. I think so. These people will not tell anyone about me going to another place for security reasons."
We've read this letter before, right?
A. We have.
Q. This is the letter where he talks about I had problems, I was in Jester IV, they drugged me up, et cetera. At the bottom is the part that I really want to focus on. He says, "I never snapped that I had" -- I'm turning over -- "a date of execution. I just went off and could not find my way back for a while. I am still here. I would love to write you, also see you, so we can catch up. As to how you react, I cannot say. People act different. Some it makes them realize what life

really means. Some they do not really care and go on to the next man. I hope it was not too much strain on you. It's a fact of where I am."

So, if we're buying into the double bookkeeping thing, at least on January 4th, 2011, he acknowledges that he's on death row.

A. He does seem to acknowledge that.

Q. This letter, if you remember it, is talking about the strain that it put on their relationship when she came to visit him and he was actually in Jester IV, couldn't have told her that he was going there, missed a visit, and it talks about that change in a relationship when you realize this person is going to die, it's a fact of where I am. And some of these pen pal ladies just go on to have the next pen pal, the next man?

A. Yes.

Q. But he hopes that she will continue her friendship with him even though it's leading towards that strain of his death?

There's another person that he writes -- and now I'm looking at Respondent's Exhibit 35, page 221 and 222. We don't often see him writing to this gentleman from France, Jean-Claude Sabatier?

A. Right.

Q. But this particular letter, dated February 1st, 2011 -- I might be looking at the wrong letter. Oh, I am. I think I am --

A. This looks like it's to Beatrice.
Q. Yeah, I'm sorry. That was just for the envelope. The next page is 222. It's dated February 10th, 2011. And this is different handwriting than we're used to seeing, isn't it?
A. It is.
Q. The letter reads: "Greetings, I am writing this on behalf of Michael. My name is Jeff Wood, 999256."

And I'll stop there. "999" is the start of any death row inmate's number, right?
A. Yes.
Q. So, this appears to be from the Jeff Wood that's on death row?
A. I don't know if his number is 256, but...
Q. It could be?
A. Could be.
Q. Okay. I'll continue. "I have known him for a while. So for as long as they leave us beside each other, I will help him with his letters and questions."

So, there's a couple of weird things about this. Number one, we have another inmate's handwriting. So, it actually is somebody else writing for Mr. Eldridge, right?
A. It certainly does appear that way, yes.
Q. And he's not writing it on behalf of Mr. Eldridge, is he?
A. Right.
Q. He's writing it on behalf of one of Mr. Eldridge's voices?

A. Right.
Q. Michael?
A. That certainly is the name that goes with the voice he's given, yes.
Q. And we know that Jeff Wood has presumably a friendship in which he helps him with his letters and he answers Eldridge's questions? Is that what you reasonably interpret from that sentence?
A. Yes. I don't know how much he answers his questions, but, yes, I understand they have that sort of a relationship.
Q. They're next to each other and he's willing to help him with letters and questions?
A. At this point they were next to each other at least, yes.
Q. Okay. All right. It's interesting that on the backside of the letter, the same letter, page 223, Gerald finishes the letter in his own handwriting, asks her for her phone number so his sister can call her and says he's mailing the letter on February 10th. We have no idea why Jeff Wood was writing a letter, do we?
A. I have no idea whatsoever.
Q. Okay. But it's kind of interesting that we have Jeff Wood suddenly jumping in the picture and writing a letter for one of Mr. Eldridge voices?
A. It was a very weird letter.
Q. Uh-huh. Would you consider that that might be actions in

concert with a delusion if your delusion was that you have these voices that sometimes maybe take over your body or maybe you have a multiple personality going on?

A. No, the difficulty I have is he isn't writing it as another person.

Q. Right.

A. Somebody is writing it for him. So, it's difficult to know what to do with that.

Q. Yeah. That's weird, right?

A. It's very weird.

Q. Maybe if Michael was a disembodied voice, he wouldn't have hands to write and so Michael convinces somehow Jeff Wood to get involved, but you would have to come up with some pretty reaching explanation for this, right?

A. It would be a very bizarre reaching explanation.

Q. Right. But at some level, it is an action that might be considered consistent with a delusion?

A. I mean, I guess it could be. I didn't think about it that way.

Q. Okay. Okay. I want to talk about a letter that he wrote on May 11th. This is Respondent's Exhibit 46, page 272. It's to Sophie. And in that letter, on page 272, he says, "Being in this cell is not living. It is like being a dog. You come into my life and you take me outside these walls, so I can be a man, a person, so I can have a life, so I can be free. I just

wish these voices would get out of my head."

It seems like he is acknowledging at the same time, assuming that he wrote these sentences close in time together, that he is in a cell, that he can leave the cell by having this communication with Sophie, by going into another place in his mind, so that he can be free, and he knows that he has voices inside his head. Isn't that what this seems to say?

A. I certainly agree with that first and second part. I don't know about that second part about this place that he goes in his mind. But I certainly see a reference to that. Yes, I understand why you draw the conclusion.

Q. Okay. Otherwise, we've never heard any reference anywhere at any time that Mr. Eldridge has a delusion that a woman named Sophie in Switzerland actually takes him physically outside of this --

A. No, we've never heard that. That's never appeared.

Q. Right. So, in this letter that does seem to be allegorical?

A. Certainly.

Q. Okay.

A. And it's also somewhat different language in many of his other letters.

Q. Right. Right. So, did it matter to your opinion that he got the disciplinary for climbing up the bars in the day room and passing a letter? There was some conversation about that

yesterday, whether he acknowledged that that was him personally, right?
A. Right.
Q. What effect do you think prison procedures, like getting a disciplinary for violating a rule, mean about his connection to reality?
A. The fact that he got the disciplinary action or his response to having gotten it? I don't know how you mean that.
Q. What did he get to the disciplinary. In this case I'm looking at Respondent's Exhibit 43, page 2. This is his disciplinary for June 18th, 2011. He made an unauthorized transfer to Offender Rocha, Felix by climbing day room bars and passing a letter on a string to 42 cell.
So, I'm asking, does the nature of what he's getting the disciplinary for tell you anything about his rational understanding of where he is?
A. I understand the question. I'm not sure what to do with it.
Q. You do understand the question? Does he rationally understand --
A. That he's in prison.
Q. -- where he is if he's claiming bars in a day room and taking a string and tossing a note to another cell?
A. He obviously has an awareness of the fact that he's in prison. I have no idea what the predicate is of how he's

passing notes or what the note is about or what sort of thing is going on or if this was some bizarre kind of thing that he did, although, frankly, there's nothing else in the record to suggest this kind of bizarre behavior.

I don't know what to do with it. On the face of it, it certainly does seem like he's trying to pass notes in class, as it were, but I'm also not aware of other indications that he's engaged in this kind of behavior. It's anomalous.

Q. Okay. He had a hearing -- if you look further down on the page, he had a hearing about this on June 26, 2011. And the offender's statement that he made was, "That since I didn't get a case in a couple of years and nobody verbally told me not to, I wouldn't have done it."

And you see that the only punishment he got was a verbal reprimand?

A. Uh-huh.

Q. So, this wasn't a really serious deal, but at least as far as this document goes, he acknowledges that he's been there for a couple of years?

A. Right.

Q. And there's rules, but there's ways to get around the rules and that's what he did. It's just a data point. You can't do anything with it is what I understood.

A. Or it is possible that this demonstrates that he has some degree of rational understanding that he is in a prison unit.

Q. Okay.
A. I mean, I see your point about that. I don't know what to make of the offense specifically in climbing the bars. It's weird and anomalous behavior, but --
Q. But it's the kind of thing that indicates I'm in prison?
A. Yeah.
Q. So, maybe he doesn't have a rational understanding of why he's in prison, but he rationally understands that he's in prison?
A. He certainly seems to have an appreciation of the fact that he's in prison.
Q. Okay.
A. Yes.
Q. Okay. Does the fact that he writes about, I don't know, other activities that he does in prison, like working out or developing friendships or getting out of his cell, is that relevant to your consideration?
A. It is relevant. He doesn't seem to say as much about that.
Q. Okay. I'm looking at Respondent's Exhibit 59, page 307. This is a letter to Beatrice.
A. Uh-huh.
Q. And it's dated September 16th, 2011, and September 17th. First, he talks about how Jeff Wood used to help him with his letters --
A. Right.

Q. -- but he just got moved to another pod. So, this guy named Ross is going to help him with his letters?
A. Right.
Q. And then the next section, I don't get out of my cell, but Ross talked him into going and working out in the day room. So, he does jumping jacks and push-ups, and working out makes him feel better?
A. I hadn't recalled any of the references to that other than that one, which I certainly do recall this letter, yes.
Q. So, at least in some respects, he understands that he doesn't get outside of his cell and he's developing this friendship, and at least it's moderately interesting that Jeff Wood is no longer next to him after September 16th?
A. Yes.
Q. But none of this indicates to you that he rationally understands his place in the world? He may be factually aware of it, but he doesn't understand it?
A. I can't exclude the fact that he may have a rational awareness to the fact that he's in prison. I mean, again, it's clear that there are times that I believe that he does not have that rational understanding, because by definition he has a delusion that he travels outside the prison system. The fact that, you know, how one survives all these years in prisons and has meals and all these other things without having some degree of a rational understanding and ability to interface with that

environment. So, I do believe that it is entirely conceivable that he is aware of and can rationally understand at times, maybe even a majority of the time. I don't know.

Q. Okay. So, let me ask you this then: If what we're talking about here is that for this section of time, whatever that is --

A. Yes.

Q. -- he does have a rational understanding of who he is, where he is, and then at other times when his disease is active, he does not have a rational understanding, would you then agree that it maybe is the case that when he rationally understands where he is, he rationally understands why he's there, and then maybe the argument is that at other times it's spotty, he doesn't?

A. It wouldn't be my explanation, no. We know that he has generally been oriented to place. It's orientation to time that people have questioned. He generally will report accurately where he is. It's an assumption on my part, of course, but given that he knows where he is, I suspect that he has a rational understanding of at least the basic rules, the basic way that one navigates that environment. We've seen that in some of the forms that he's filled out and so on. I don't know that that translates to a rational -- a rational understanding of why he's there.

Q. So, that's the link that he doesn't have? He knows where

he is. He just apparently does not understand why he's there?
A. It's the link that I infer that he doesn't have, yes, based on my examination of the records and the evaluation and so forth, yes.
Q. So, when we talk about his three original delusions -- well, I say original --
A. I understand.
Q. -- but the three delusions relevant here, Cynthia is alive, I live outside the prison, and my food is being poisoned, the food is being poisoned, we understand doesn't really have any relationship to the understanding of why he is in prison, correct?
A. Right. I think that's stated correctly, yes.
Q. It's only the Cynthia is alive and I can live outside the prison things that interfere with his ability to understand why he's in prison?
A. That are manifestations of my conclusion that he doesn't have an understanding of why he's in prison.
Q. So, those are the self-serving delusions, those are the ones that -- those are the ones that advance his goal of continuing to live, if you want to think of it that way?
A. To the extent that we look at them as self-serving in that capacity, yes, that's accurately stated.
Q. Okay. So, if I understand the summary correctly --
A. If I may? I'm not purporting that the delusions cause him

to not have an understanding. I'm purporting that his lack of a rational understanding is what triggers and creates the delusional system.

Q. I'm sorry. Say that again.

A. If a person has delusions and those delusions indicate a lack of understanding, that smacks a great deal of the idea of somebody who might be malingering. You concoct this story. You have these symptoms. These symptoms give you a proverbial get-out-of-jail-free card. What I'm suggesting is that his psychopathology, his lack of awareness, his internal mental state, the very thing that causes the lack of rational understanding and that lack of rational link is the very thing that creates and drives the delusions. It doesn't go in the other direction. The core of it is the pathology, the lack of rational understanding.

Q. Okay. So, what I understand that to mean is, it would not be possible for him to be both, have this pathology and be competent for execution, because with this pathology, he would not be capable of understanding the link between crime and punishment?

A. With the way that his pathology manifests, I would agree with that statement.

Q. Okay.

A. Obviously one could have the same diagnosis manifesting in a different way and still get the criteria for competence, yes.

Yes.
Q. Okay. In Mr. Eldridge's case, they are mutually exclusive? He cannot be both his kind of schizophrenic and competent to be executed?
A. This is my contention, yes.
Q. Okay. So, basically what we have here is Mr. Eldridge is an antisocial personality and -- I guess I'm still not clear, does he know that he killed Cynthia? We don't know what he knows?
A. We don't know what he knows. We know that he knows that people say that he's there because he killed Cynthia, and that's been a consistent statement he's made over the years. One can make of that what they will, but that's been a very consistent report.
THE COURT: Is it fair to say that he understands the meaning of those words?
THE WITNESS: He does understand the meaning of those words, Your Honor.
THE COURT: He has at least from time to time a belief that Cynthia is still alive?
THE WITNESS: Yes.
THE COURT: Okay. But he doesn't attempt to reconcile that with the fact that he knows and understands that people are telling him that he's in prison because he killed Cynthia?
THE WITNESS: With the one single exception that he

has made some statements of, I don't know why they don't call her, I can give them her number, those kinds of things, yes, he does not attempt to reconcile that.

THE COURT: And there's no evidence of a similar denial of killing the daughter?

THE WITNESS: Right, I think that's accurately stated.

THE COURT: So, he acknowledges that?

THE WITNESS: No, he, to my understanding, has never, other than that one statement, has ever acknowledged that he has killed her or that he believes that she's dead.

THE COURT: He acknowledged that in that one statement at least?

THE WITNESS: Yes, I forget how the statement was written. I don't know if he agreed with it -- yes, he acknowledged it by way of agreement, yes.

BY MS. ODEN

Q. And we've agreed he knows he's on death row, not just in prison, but he's specifically on death row?

A. He certainly has that awareness. That certainly comes up in his writings.

Q. And he knows that this particular proceeding determines basically whether he lives or dies?

A. I don't know if he knows that.

Q. Okay. He writes in a letter that he was told that the State's expert said the State of Texas can go ahead and kill

him?
A. Right. He himself has said that when pressed on it, that the State can do what it wants to do.
Q. Right. But specifically talking about this about this proceeding --
A. Yes.
Q. -- he wrote in that letter, that Dr. Allen told the State that it could go ahead and kill Mr. Eldridge?
A. Right. Yes, I know he wrote that. I just don't know if he understands that this proceeding, the thing that we're doing today, this whole event --
Q. Okay.
A. -- I just don't know one way or another.
Q. He knows that cooperating with you is helpful for him?
A. I don't know if he does or not. I don't know if he has any idea what my opinion is. I don't know that I've ever shared it with him at any point. What I know he knows is that his prior attorney, current attorney, friend, Mr. Lee Wilson, has said, "Do what this guy says."
Q. And you know that Mr. Eldridge knows that because you were there when Lee Wilson told him that?
A. Yes. I was there when Lee Wilson introduced us and said, "He's going to ask you some questions, and I want you to do your best," yes.
Q. And presumably Mr. Eldridge understands what Mr. Wilson

said to him?
A. I presume that he did, yes.
Q. He's not just factually aware of it, he understands it?
A. Insofar as that I'm there and going to ask questions and he should answer those questions, yes, I think he understands that. I don't know if he understands the significance or my purpose in being there.
Q. And he acted as though he understood Mr. Wilson's words, because he proceeded to engage with you over many hours that day and other days of testing and of assessment?
A. He did. Of course, it's very structured time by and large and he was through, but, yes, yes, he did.
Q. Mr. Eldridge was present during the competency hearings that were held before his trial on capital murder --
A. Yes.
Q. -- except for the portion of time when he was made to leave because he was acting out?
A. Right.
Q. And Mr. Eldridge was present during the mental retardation hearing in this court years ago?
A. That's my understanding, yes. The Atkins hearing?
Q. Yes.
A. Yes.
Q. And Mr. Eldridge is neighbors or was neighbors with Inmates Riles and Jeff Wood?

A. Yes, that's my understanding.
Q. And had some kind of communication with both of them?
A. It appears that way, yes, indeed.
Q. And I guess I just want to finish up with asking you about Mr. Wood again just real quickly. Mr. Wood's case is the case where you learned -- or it was part of the case, that kind of like Mr. Eldridge, an inmate who has factual awareness but who doesn't appear to willingly understand what they're aware of or doesn't accept what facts they're made aware of, was found competent to be executed, in part because he failed to act on the alleged delusions that he had, right?
A. I'm not sure I understand what the question is.
Q. Wood versus -- I'm going slowly, partly to try to make sure you understand.
A. No, I appreciate that. I just don't understand what your question to me is about that.
Q. Yes Wood's case --
A. Yes.
Q. -- was the case that helped you to see -- it was your first competency to be executed case. So, it was a case that helped instruct you that a similar inmate, an inmate who had a factual awareness of where he was and why he was there -- you would agree with me Jeff Wood had a factual awareness, because people told him you are on death row and you are going to be executed for this crime?

A. I would agree with you that Jeff Wood had a factual awareness.
Q. Okay. So, in that respect, Mr. Eldridge and Mr. Wood are similar? They both have a factual awareness?
A. They both have a factual awareness, yes.
Q. Okay. And Mr. Wood was found to be competent to be executed even though, in your opinion, he did not have a rational understanding of that factual awareness; is that right?
A. That is a true statement, yes.
Q. And, so, even though he didn't willingly accept the facts that he was aware of, Mr. Wood said, "That's what everybody says I'm here for, but I don't buy it," he was still competent to be executed, correct, the court said?
A. Yes, that's correct.
Q. And one of the reasons that they found a link between his factual awareness and his rational understanding was that there were no actions on the part of Mr. Wood in concert with or to demonstrate his delusion. You understood that --
A. Yes.
Q. -- was important to the court, correct?
A. Yes. One of the reasons that they concluded that was because they believed that there was no relationship between his actions and his delusional system, yes.
Q. Right.

A. That was the conclusion the court drew, yes.
Q. The court drew this conclusion that there had to be -- I think you said it was a relation between the delusion and the actions, a connection?
A. Right. I think you used the word "in concert," is the phrase I think you used earlier.
Q. Okay.
A. This was what the court said in the decision.
Q. Okay. If you were going to point this Court to conclusive or persuasive evidence that there is a connection between Mr. Eldridge's delusion that he lives outside of prison, that he doesn't stay on death row all the time and some actions that he took, would you point to the fact that he tells other people, "I'm not always here. I go home"?
A. That would be an indication. Based on the predicate that you stated, however, that wouldn't indicate a behavior, as you laid out the argument, that suggests that he's behaving in concert with that.
Q. So, for example, like the court said in Wood, a behavior would be something more than just saying it. It would also be revealed in his letters, like he would write to his family and complain about the conspiracy?
A. This was one of the things that you had indicated as you were presenting the Wood case.
Q. Okay. Has any court, to your knowledge, found your opinion

or your conclusion on competency for execution to be credible?
A. Which opinion are we referring to?
Q. Any court opinion.
A. Has there been a court opinion that has agreed with my take?
Q. Yes.
A. Given that I have had one competency to be executed decision come down, I believe the answer is no.
Q. Okay. Thank you.
THE COURT: Passing the witness?
MS. ODEN: Yes, ma'am.
THE COURT: All right. So, we'll pick up in the morning at 9:00 o'clock with redirect and hopefully finish this witness tomorrow. All right. We'll go till a little before noon.
MS. FERRY: I will be done with Dr. Roman midmorning.
THE COURT: Great. And you have -- that's your last witness, right?
MS. FERRY: That's right.
THE COURT: Okay.
MS. ODEN: Did you say 9:00 o'clock, Your Honor?
THE COURT: Yes. Who will you have in the morning?
MS. ODEN: Can I consult with co-counsel and call my witnesses -- call my witness to see, because I thought we were starting at 10:00 and ending at noon and so I wasn't sure, so I

have to call.

THE COURT: Okay. Well, your witness doesn't have to be here before 10:00, because we'll finish with this witness.

MS. ODEN: I just want to make sure with travel time, that they can be here.

THE COURT: All right. Good. And were you able to check with the airlines, or you'll check tonight and let me know about --

MR. WIERCIOCH: I will check tonight.

THE COURT: That will be great. Okay. Thank you very much.

MS. FERRY: Your Honor, when are we breaking tomorrow? Does the Court know yet?

THE COURT: I think probably around 11:30ish. Thank you. That's my best guess. All right. Thank you very much.

(Concluded at 7:00 p.m.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

/s/ Kathy L. Metzger 5-23-12

Kathy L. Metzger Date

Official Court Reporter